

CCASE:

SOL (MSHA) V. US STEEL MINING

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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.

July 11, 1984

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

Docket No. PENN 82-336

U.S. STEEL MINING CO., INC.

DECISION

In this case arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), United States Steel Mining ("USSM") has challenged a finding by the Commission's administrative law judge that a violation was "significant and substantial" as that term is used in section 104(d)(1) of the Act. 30 U.S.C. § 814(d)(1). USSM's Maple Creek No. 1 coal mine was inspected in May 1982 by an inspector from the Department of Labor's Mine Safety and Health Administration ("MSHA"). During the inspection a six-inch gash was discovered in the outer jacket of insulation of a trailing cable leading to a continuous mining machine. Approximately two inches of the gash had been covered by electrical tape, leaving exposed about four inches of ground wire. Three live power wires carrying 480 volts of current also were contained within the trailing cable but each of them was covered by a separate layer of insulation; there was no visible damage to that insulation at the time of the inspection. The inspector issued a citation alleging a violation of 30 C.F.R. § 75.517, and he indicated that the violation was "significant and substantial." 1/

USSM contested the designation of the violation as "significant and substantial" and the matter came before an administrative law judge of this independent Commission. USSM did not contest the underlying violation. At the hearing, witnesses for both MSHA and USSM agreed that because the power wires remained individually insulated at the time of inspection there was no immediate danger of electrical shock even if a miner should inadvertently grab the cable. However, the witnesses

1/ 30 C.F.R. § 75.517 in part provides:

Power wires and cables ... shall be insulated

adequately and fully protected.

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also agreed that a tear in the outer jacket weakened the overall system of protective insulation and increased the risk of danger to the internal layer of insulation on the power wires. Tr. 19, 27-29.2/ The administrative law judge found that the violations were of a "significant and substantial" ("S&S") nature because a trailing cable is subject to "extraordinary abuse" in the harsh environment of a coal mine. 5 FMSHRC at 1569. For this reason "both the outer jacket and the conductor wire insulation are important." Id 3/ The judge stated further that a determination of "significant and substantial" must be made at the time the citation is issued (without any assumptions as to abatement), but in the context of "continued normal mining operations." Id.

USSM challenges those findings on review. It argues that the gash in the trailing cable insulation observed by the inspector would not have resulted in injury absent the occurrence of some future additional aggravating condition. Therefore, USSM submits that there was no likelihood that serious injury would have resulted from the cable condition, as it existed at the time of inspection and citation. In essence, USSM argues that the scope of consideration, for determining whether a significant and substantial violation exists, should be limited solely to consideration of the condition as it exists at the precise moment of inspection.

We reject this narrow interpretation of the statutory language. Section 104(d)(1) specifies that a violation is to be designated S&S if it "significantly and substantially contribute[s]" to a mine hazard. 4/ This contribution is measured according to whether there is a "reasonable likelihood that the hazard contributed to will result in an injury ... of a reasonably serious nature." Cement Division, National Gypsum Co., 3 FMSHRC 822, 825 (April 1981). Such a measurement cannot ignore the relevant dynamics of the mining environment or processes; indeed this cable was in normal use at the time it was observed by the inspector. Under these circumstances, it was not error for the judge to evaluate the cited violation in terms of "continued normal mining operations."

2/ USSM provided testimony as to the presence of a ground fault system in the trailing cable used at this mine. The ground fault system is designed to deenergize the trailing cable if a power wire comes in contact with the ground wire. The administrative law judge found that despite this system, electrical shock of some degree could occur. United States Steel Mining Co., Inc., 5 FMSHRC 1567, 1569 (September 1983)(ALJ).

3/ The judge also discussed the effect of water, if present, upon

the electrical hazard posed by the violation. 5 FMSHRC at 1569. We regard this discussion as an example of how conditions could develop in the mining environment which could cause an improperly protected cable to become more hazardous.

4/ The Mine Act states that violations that are "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety and health hazard" may serve as the basis for certain enforcement mechanisms. 30 U.S.C. §§ 814(d)(1) and (e)(emphasis added).

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The administrative law judge considered those mining conditions to which the damaged cable predictably would be exposed. He found that both the outer and inner layers of insulation provided important protection against electrical shock. These findings are fully supported by the testimony of the MSHA inspector and the operator's witness, each of whom stated that the mining environment is harsh and that damage to the outer layer of insulation weakened the protection afforded by the inner layer.

Accordingly, we conclude that the violation in this case properly was designated "significant and substantial" in that there was a reasonable likelihood that the condition of the trailing cable could contribute, significantly and substantially, to the cause and effect of a safety hazard. The decision of the administrative law judge is affirmed.

Richard V. Backley, Commissioner

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Commissioner Lawson concurring:

On the basis of the criteria set forth in my separate opinion in Cement Division, National Gypsum Co., 3 FMSHRC 822 (April 1981), I concur in finding the violation in this case to be significant and substantial within the meaning of section 104(d)(1) of the Mine Act, 30 U.S.C. § 814(d)(1).

I join my colleagues in rejecting USSM's invitation to consider "spatial-temporal variables" in determining whether the violation was significant and substantial. At the time of citation the continuous mining machine was in operation and the damaged trailing cable was in use. It is reasonable to conclude that absent intervention by a federal enforcement official operations would have continued and miners would have remained exposed to the electrical hazard the cited standard was designed to protect against. If, as USSM suggests, all factors necessary for the occurrence of an occupational injury must be present before a significant and substantial finding can be made, the violation would constitute an imminent danger subject to a section 107(a) withdrawal order. As the Secretary maintains, this interpretation would be inconsistent

with the enforcement scheme of the Mine Act and its preventive goals. In order to be designated significant and substantial, under section 104(d)(1) of the Mine Act, a violation must "contribute to the cause and effect of a ... mine safety or health hazard," it need not constitute one.

Accordingly, the administrative law judge properly considered whether the violation was significant and substantial in light of the extraordinary abuse to which a continuous miner trailing cable is subjected during continued normal mining operations.

A. E. Lawson, Commissioner