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SOL (MSHA) V. US STEEL MINING
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C. 20006
August 28, 1984

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

v.

DOCKET NO. PENN 83-63

U. S. STEEL MINING CO., INC.

DECISION

The issue in this civil penalty case is whether a cited violation of a regulation relating to permissible electric equipment was properly designated "significant and substantial," as that term is used in the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1982) ("Mine Act")

The case involves a violation of mandatory safety standard 30 C.F.R. 75.503, which requires coal mine operators to "maintain in permissible condition all electric face equipment required . . . to be permissible . . ." 1/ Here, one of four bolts required to attach the lens to the headlight assembly of a shuttle car was loose, compromising the explosion-proof nature of the headlight compartment. In a civil penalty proceeding before an administrative law judge of this independent Commission, U. S. Steel Mining Co. ("U.S. Steel Mining") conceded that it had violated the standard, but argued that the violation should not have been designated significant and substantial under the Commission's decision in Cement Division, National Gypsum Co., 3 FMSHRC 822 (April 1981).

At the hearing before the judge, the MSHA inspector who issued the citation was the only witness to testify about the violation in this case. He explained that he had issued the citation at 10:30 a.m.

on January 4, 1982. Shortly before, at 9:20 a.m., the inspector had also issued a citation for excessive coal accumulations in an entry and crosscut about 320 feet

1/ Relevant permissibility standards are set forth in 30 C.F.R. Part 18, including 18.46(a), requiring that headlights "be constructed as explosion-proof enclosures." 'Explosion-proof enclosure' is defined in 18.2.

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from the subsequently cited shuttle car. He said that the crew had stopped mining activities in order to clean up the cited accumulation. 2/ The cleanup was still in progress when the inspector issued the shuttle car citation.

The MSHA inspector testified that the purpose of requiring that headlights "be constructed as explosion-proof enclosures," 30 C.F.R. 18.46(a), is to ensure that any ignition that may occur inside the headlight will not escape into the mine atmosphere. He explained that the atmosphere inside the enclosure expands and contracts as the headlight is turned on and off. When the headlight is turned off, the atmosphere inside the enclosure cools, contracting and drawing in outside air which may contain methane. Sparks in the headlight compartment could cause a methane ignition inside the compartment. The inspector testified that, if such an ignition occurred, "[w]ith the one bolt loose like that, the pressures that are built up, you could have distortion or even breakage of some of the other bolts that would allow the flame from an ignition inside the compartment to escape to the outside atmosphere." Tr. 81. In that event, a larger explosion could then occur, injuring or killing the shuttle car operator or any other nearby miners.

The inspector testified that he designated the violation significant and substantial because he believed that an explosion of this type was "a reasonable thing that could happen." He noted that an explosion "in either Colorado or Utah" that had recently killed 15 people "was directly attributed to an opening" in a headlight compartment. Tr. 82. He also testified that Maple Creek #2 is a gassy mine that liberates over one million cubic feet of methane in a 24-hour period and noted that the shuttle car was on the same section where he had just cited U. S. Steel Mining for excessive coal accumulations.

Based on this testimony the judge affirmed both the citation and the inspector's significant and substantial finding 5 FMSHRC 1873 (October 1983) (ALJ). He assessed a civil penalty of \$100 for the violation, 3/ and U. S. Steel Mining petitioned for discretionary review.

2/ A U S. Steel Mining witness testified, in reference to the accumulation violation, that no mining had yet started on that shift, because the company was aware that the cleanup had to be completed before mining could be resumed. The judge did not make a specific finding on this issue.

3/ The Secretary had proposed a penalty of \$206.

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On review, U. S. Steel Mining, conceding that it violated the standard, argues that the likelihood of the violation contributing to a methane explosion was so remote that the violation may not be designated significant and substantial. Specifically, it argues that the judge's "premise" that sparking occurs within a headlight is "Unsupported in fact or by the record." (Br. 3) It further claims that an explosive concentration of methane would not have occurred in the area of the violation and that neither the inspector nor the judge properly applied the Commission's National Gypsum test in determining that the violation should be designated significant and substantial.

We hold first that substantial evidence supports the judge's conclusion that sparking occurs within the headlight. We note again that the inspector who issued the citation was the only witness to testify about the violation. He testified that, although sparking within the headlight is not "normal," it is "frequent" and can be caused by any of a number of factors. Tr. 85, 89. Since U. S. Steel Mining presented no contrary evidence, we reject its assertion that the judge erred in finding that sparking occurs within the headlight.

As to the contention that any hazard posed by the violation was too remote to justify a significant and substantial designation, we have previously held that a violation should be designated significant and substantial "if, based on the particular facts surrounding that violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." National Gypsum, *supra*, 3 FMSHRC at 825. In *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (January 1984) we explained:

In order to establish that a violation of a mandatory safety standard is significant and substantial under National Gypsum the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard--that is, a measure of danger to safety-- contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

We have further explained that the third element of the *Mathies* formulation "requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury." *U. S. Steel Mining Co.*, 6 FMSHRC (Docket No. PENN 83-39, slip op. at 3)(August 1984). In our decisions we have emphasized that, in line with the language of

Section 104(d)(1), 30 U.S.C. 814(d)(1), it is the contribution of a violation to the cause and effect of a hazard that must be significant and substantial.

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Applying these principles to the instant case, we affirm the judge's holding that the cited violation was properly designated significant and substantial. In doing so we reject U. S. Steel Mining's contention that because mining was not taking place at the precise moment the citation was issued, the violation posed no hazard. Mining was scheduled to resume as soon as the nearby accumulation was cleaned up, and there was no suggestion that U. S. Steel Mining, in the normal course of events, would have discovered and corrected the violation before that time.

Similarly, the fact that the mine's ventilation was adequate at the time the citation was issued did not diminish the possibility that the violation would result in a serious mine hazard. The Maple Creek #2 mine is classified as gassy and has a history of methane ignitions. Additionally, there was an excessive accumulation of coal not far from the cited shuttle car. U. S. Steel Mining offered no evidence to rebut the testimony of the inspector that it was reasonably likely that the violation would contribute to a methane explosion. Under these circumstances we believe that the violation was properly designated significant and substantial.

For the foregoing reasons we affirm the decision of the administrative law judge.
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).

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