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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
April 29, 1985

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

v. Docket No. SE 84-23

JIM WALTER RESOURCES, INC.

BEFORE: Backley, Acting Chairman; Lastowka and Nelson,  
Commissioners

DECISION

BY THE COMMISSION:

In this civil penalty case arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1982), we are called upon to examine the safeguard provisions of 30 C.F.R. 75.1403. The specific issue presented is whether 30 C.F.R. 75.1403-5(g), dealing with the provision of a clear travelway at least 24 inches wide "on both sides of all belt conveyors," applies to the transportation of coal on coal-carrying belt conveyors. The Commission's Chief Administrative Law Judge answered the question in the negative and vacated a citation alleging a violation of a safeguard issued pursuant to section 75.1403-5(g). The judge concluded that the cited regulatory provision and section 75.1403, as well as Part 75 Subpart 0 of 30 C.F.R. (in which section 75.1403 is contained), do not apply to the transportation of coal on coal-carrying belt conveyors. 6 FMSHRC 1815 (July 1984)(ALJ).1/

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1/ As discussed below, section 75.1403-5(g) was promulgated to implement section 314 of the Mine Act. 30 U.S.C. 874. Section 314 of the Act, entitled "Hoisting and Mantrips," was adopted without change from the 1969 Coal Act. 30 U.S.C. 801 et seq. (1976)

(amended 1977). The regulatory counterpart of section 314 of the Act is Subpart 0 of 30 C.F.R. Part 75, also entitled "Hoisting and Mantrips," which includes 75.1400 through 75.1405. Section 75.1403 repeats section 314(b) of the Act, 30 U.S.C. 874(b):

Other safeguards adequate, in the judgment of an authorized representative of the Secretary [of Labor], to minimize hazards with respect to transportation of men and materials shall be provided.

(footnote 1 continued)

~494

We disagree. For the reasons stated below, we hold that the safeguard provisions of section 75.1403-5(g) apply to coal-carrying belt conveyors. Accordingly, we reverse the judge's vacation of the citation and we remand for a determination on the merits consistent with the principles enunciated in *Southern Ohio Coal Co.*, 7 FMSHRC \_\_\_\_\_, Docket Nos. WEVA 84-166 & WEVA 84-94-R (decided this same date).

On September 8, 1981, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA"), T. J. Ingram, conducted an inspection of the Jim Walter Resources ("JWR") No. 3 underground coal mine. Pursuant to section 75.1403, the inspector issued to JWR "notice to provide safeguard" No. 0758641, which stated:

Twenty-four inches of travel space was not provided between the No.3 longwall belt and the right rib along the pillar in by the No. 1 header. Twenty-four inches of travel shall be provided on both sides of the belt.

On September 8, 1984, while inspecting the same mine, MSHA Inspector Luther McAnally issued the instant citation, which referred to section 75.1403-5(g) and alleged a violation of the safeguard notice issued by Inspector Ingram:

A clear travelway of at least 24 inches on each side of the North Mains A and B belt was not maintained in that large rocks, rolls of belt, and belt structures were obstructing the walkways. Safeguard No. 0758641 was issued by T.J. Ingram on September 8, 1981.

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footnote 1 continued

The procedure by which an authorized representative of the Secretary of Labor may issue a citation pursuant to section 75.1403 is described in 30 C.F.R. 75.1403-1(b):

The authorized representative of the Secretary shall in writing advise the operator of a specific safeguard which is required pursuant to 75.1403 and shall fix a time in which the operator shall provide and thereafter maintain such safeguard. If the safeguard is not provided within the time fixed and if it is not maintained thereafter, a notice shall be issued to the operator pursuant to section 104 of the Act.

30 C.F.R. 75.1403-2 through 75.1403-11 set forth specific "criteria" by which authorized representatives are guided in requiring safeguards. Section 75.1403-5 is headed: "Criteria -- Belt

Conveyors," and -5(g), the subsection at issue in this case, states in part:

A clear travelway at least 24 inches wide should be provided on both sides of all belt conveyors installed after March 30,1970.

Inspector McAnally testified that the size and extent of the objects described made it difficult and potentially dangerous to travel the walkway alongside the belt conveyor. It is not disputed that the cited belt conveyor was used solely to transport coal.

In his decision, the judge expressed his agreement with an earlier unreviewed holding by another Commission judge that the statutory and regulatory intent behind section 75.1403 and subsection -5(g) is to address hazardous conditions associated with belt conveyors that transport persons and materials other than coal. 6 FMSHRC at 1819, citing *Monterey Coal Co.*, 6 FMSHRC 424, 451-58 (February 1984)(ALJ). Noting that the safeguard provisions of section 75.1403 are contained in Subpart 0, entitled "Hoisting and Mantrips," the judge construed the reference to the "transportation of men and materials" to exclude the transport of coal. 6 FMSHRC at 1819. The judge stated that if the Secretary believed that coal-carrying belt conveyors could be covered under Subpart 0, it would have been a simple matter for him to specifically include them." *Id.* Lastly, the judge noted that coal-carrying belt conveyors are mentioned specifically in 30 C.F.R. 75.303. That provision is based on section 303 of the Mine Act, 30 U.S.C. 863, and deals with pre-shift and on-shift inspections of belt conveyors. The judge viewed the contrast between the reference to coal-carrying belt conveyors in section 75.303 and the lack of express reference to such belts in section 75.1403 as a further indication that section 75.1403 was not intended to apply to coal-carrying belt conveyors. *Id.*

The argument that section 314 of the Mine Act and Subpart 0 of 30 C.F.R. Part 75 are limited to the movement of persons and materials other than coal is based on the lack of specific references to "coal-carrying belt conveyors" in these provisions. We find the absence of such explicit mention to be immaterial in view of the inclusive purpose and language of these provisions. We conclude that section 314(b) authorizes the Secretary of Labor to require safeguards with respect to coal-carrying belt conveyors and that the relevant regulations of Subpart 0 apply to such belts.

The regulatory provisions contained in Subpart 0 were promulgated to implement section 314 of the Act. Therefore, in construing these regulations, we must look first to the meaning of the statutory provision they effectuate. See *Emery Mining Corp.*, 5 FMSHRC 1400, 1401-02 (August 1983), *aff'd sub nom. Emery Mining Corp. v. Secretary of Labor*, 744 F.2d 1411, 1414 (10th Cir. 1984). Before focusing on section 314(b), which deals specifically with the subject of safeguards, we examine section 314 from a general

perspective.

Unquestionably, a major regulatory concern of section 314, entitled "Hoisting and Mantrips," is the transport in coal mines of persons and of "materials" in the form of equipment and supplies. However, that concern does not exhaust the scope of section 314. Sections 314(e) and (f), for example, address safe braking, stopping, and coupling with respect to "locomotives," "haulage cars," and "haulage equipment." As we have indicated in a related context, the term "haulage car" in mining parlance refers to a car that carries ore, in addition to personnel,

~496

supplies, or equipment. *Florence Mining Co., etc.*, 5 FMSHRC 189, 195-96 (February 1983), *aff'd mem.* 725 F.2d 667 (3rd Cir. 1983). In mining usage, "track haulage" -- one of the general subjects of sections 314(e) and (f) -- denotes the "movement or transportation of excavated or mined materials..." Bureau of Mines, Dep't of the Interior, *A Dictionary of Mining, Mineral, and Related Terms* 1156 (1968) ("DMMRT"). See also *Florence Mining Co.*, *supra.*<sup>2/</sup> Thus, section 314 of the Act clearly extends to the transportation of coal in coal mines.

Section 314(b), the safeguard provision repeated in 30 C.F.R. 75.1403, is cast in broad terms

Other safeguards adequate, in the judgment of an authorized representative of the Secretary, to minimize hazards with respect to transportation of men and materials shall be provided.

30 U.S.C. 874(b) (emphasis added). Section 314(b) is found in a statutory section that, as concluded above, applies to the transport of coal. In this context, reading "transportation of ... materials" to encompass the movement of coal is both natural and logical. The term "transportation" is not qualified by type, power, or mode of transport used. We read the term to cover both track and trackless haulage (n. 2, *infra*). "Material" is also a broad term. See Webster's Third New International Dictionary (Unabridged) 1392 (1971). The broad language of section 314(b) manifests a legislative purpose to guard against all hazards attendant upon haulage and transport in coal mining, regardless of that which is transported or the mode of transport used.

The legislative history relevant to section 314(b) further evidences such a purpose:

This section authorizes the inspector to require certain safeguards for transporting men and materials.

All mantrip and haulage operations regardless of the motive power or conveyance may be hazardous. It therefore has been deemed wise to make the mandatory provisions all inclusive and not just confine it to any one type of conveyance.

S. Rep. No. 411, 91st Cong., 1st Sess. 81 (1969), reprinted in Senate Subcommittee on Labor, Committee on Labor and Public Welfare, 94th Cong., 1st Sess., *Legislative History of the Federal Coal Mine Health and Safety Act of 1969*, at 207 (1975)(emphasis added). In

light of the foregoing considerations, we interpret section 314(b) to authorize the Secretary of Labor to require "[o]ther safeguards ... to minimize

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2/ "Haulage," the general concern addressed by section 314, refers to the transportation of ore, personnel, waste, supplies, and equipment. See DMMRT 530. The two major modes of haulage are track haulage (vehicles running on tracks) and trackless haulage; the latter includes wheeled haulage and conveyor haulage. See e.g., S. Cassidy (ed.), *Elements of Practical Coal Mining* 125-42 (1973).

hazards with respect to the transportation" of coal on coal-carrying belt conveyors.<sup>3/</sup>

The preceding statutory construction leads to the crucial question in this case: whether the Secretary availed himself of 314's grant of authority by addressing, in his Subpart regulations, safeguard requirements for coal-carrying belt conveyors. At first glance, the fact that the specifically challenged regulatory provision, 75.1403-5(g), refers broadly to "all belt conveyors" (emphasis added) would appear to provide an affirmative answer to that question. Nevertheless, we are met with a related series of objections that Subpart 0 as a whole, 75.1403 entitled "Other safeguards," and 75.1403-5 entitled "Criteria--Belt conveyors," all exclude the movement of coal. For reasons similar to those developed in our examination of 314, we find no such restrictions.

We start with Subpart 0 itself. 30 C.F.R. 75.1401, a section of general applicability covering "hoists" used to transport either persons or "materials," deals with the rated load capacities of "hoists" and the position indicators of "the cage, platform, skip, bucket or cars." All the key terms in 75.1401 refer, in part, to the transportation of ore in mines. See DMMRT 146, 160, 172, 709, 834, & 1021. 30 C.F.R. 75.1404 sets braking requirements for "locomotives and haulage cars," and 30 C.F.R. 75.1405 requires automatic couplers for "all haulage equipment." As demonstrated above in our discussion of the corresponding provisions in 314, these haulage references are to equipment and processes involved in the transport of coal. Thus, the regulatory provisions contained in Subpart 0 are not limited to the movement of persons and materials other than coal. Again, while the title to the subpart, "Hoisting and Mantrips," provides a convenient indication of one core concern, the heading is not all inclusive of the subpart's content.

Section 75.1403 itself simply restates 314(b) of the Act. Accordingly, this regulatory provision repeats the broad statutory language, which, for the reasons set forth earlier, may be applied to the transportation of coal on belt conveyors. Section 75.1403 is part of a larger regulatory subpart that, as just discussed, extends to the movement of coal. Aside from 75.1403-5, which contains the criteria concerning belt conveyors, a number of the subsections of 75.1403 deal, in part, with the transport of coal. 30 C.F.R.

75.1403-2 sets braking standards for "hoists" and "elevators" for the transportation of "materials," and uses the terms "cage, skip, car or other devices." All the relevant terms in this section connote, in part, the movement of coal. 30 C.F.R. 75.1403-8 sets criteria for

"track haulage" roads.

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3/ Reliance has been placed on the title of 314 (and of Subpart O), "Hoisting and Mantrips," as an indication that only the transport of persons and materials other than coal is covered. As we have observed previously, titles and organizational arrangements may serve as intrinsic aids to construction in appropriate instances. Frequently, however, titles are merely summary highlights of general content or legislative objectives. In cases of seeming conflict between a shorthand title and clear legislative purpose or text, the latter must control. Allied Chemical Corp., 5 FMSHRC 1854, 1856-57 (August 1984).

As shown above "track haulage" commonly refers to the "movement or transportation of excavated or mined materials...." DMMRT 1156. Similarly, 30 C.F.R. 75.1403-10 sets general criteria for haulage pertaining to haulage equipment, tracks, roads, etc. When viewed in its entirety, it is apparent that section 75.1403 contains criteria that address the transportation of coal, as well as the transportation of personnel and other materials. We therefore reject the judge's conclusion that section 75.1403 authorizes safeguards only with respect to the transportation of men and materials other than coal.

Nor can we find that section 75.1403-5 or its subsection (g) were intended to exclude coal-carrying belt conveyors from coverage. We interpret the criteria at 30 C.F.R. 75.1403-5(a), (b), (c), (d), (e), (f), and (i) to require the implementation of additional safety features and practices when belt conveyors are used for the transportation of persons and materials other than coal. 30 C.F.R.

75.1403-5(h), however, sets out less stringent requirements on belt conveyors that "do not transport men." A reasonable interpretation of this subsection, given the wide scope of Subpart O, is that it applies to belts that carry coal. Likewise, section 75.1403-5(j), which prohibits persons from crossing "moving conveyor belts," necessarily applies to all moving belts, whatever they carry, because the hazard presented is the same.

Turning to the criterion at issue, section 75.1403-5(g), the most natural reading of the plain language of subsection (g) is that it applies to all belt conveyors regardless of whether they move coal, personnel, or materials other than coal. Nevertheless, the judge concluded, in part, that coal-carrying belts are properly the subject of section 75.303, and not of section 75.1403, because Congress, in section 303(d) of the Act (and the Secretary in 30 C.F.R. 75.303) clearly distinguished between coal-carrying and person-carrying belts. However, section 75.303 only specifies the requirements for pre-shift and on-shift examinations of belt conveyors, and does not set general safety standards for belt conveyors. The only reference to coal-carrying belts in section 75.303 is that "they shall be examined after the shift has begun." We cannot view this separate statutory and regulatory reference as a convincing indication that the broad language of section 314, Subpart O, and section 75.1403-5(g) does not extend to coal-carrying belt conveyors.

More fundamentally, the very purpose of these provisions -- the elimination of transportation-related hazards -- militates against the distinctions that we have been asked to recognize. Section

75.1403-5(g) authorizes safeguards that provide for a "clear travelway ... on both sides of all belt conveyors...." Miners frequently must work, carry out inspection activities, and pass alongside moving coal-carrying belt conveyors. Injuries to miners resulting from accidental contact with these belts would be no different than those involving contact with non-coal-carrying conveyors. Therefore, we find no basis for limiting the requirement of unobstructed travelways to one type of belt conveyor and not the other.

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For the reasons stated above, we conclude that section 75.1403-5(g) applies to coal-carrying belt conveyors. Because the citation in this case was vacated by the judge on the threshold issue of coverage under the safeguard regulations, we remand for a finding as to whether the conditions cited constitute a violation of the safeguard issued under section 75.1403-5(g). See *Southern Ohio Coal Co.*, supra.<sup>4/</sup>

Richard V. Backley, Acting Chairman  
James A. Lastowka, Commissioner  
L. Clair Nelson, Commissioner

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<sup>4/</sup> Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823(c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.

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