

CCASE:
MSHA V. PITTSBURG & MIDWAY COAL MINING
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FMSHRC-WDC
JAN 29, 1986

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

v.

Docket No. CENT 83-65

PITTSBURG & MIDWAY COAL
MINING COMPANY

BEFORE: Backley, Lastowka and Nelson, Commissioners

DECISION

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982)(the "Mine Act"). It involves a single issue: Whether Pittsburgh & Midway Coal Mining Company ("P&M") violated 30 C.F.R. § 77.202, a mandatory safety standard which provides: "Coal dust in the air of, or in, or on the surfaces of, structures, enclosures, or other facilities shall not be allowed to exist or accumulate in dangerous amounts." Following a hearing on the merits, a Commission administrative law judge concluded that P&M violated the standard and assessed a civil penalty of \$400. 6 FMSHRC 1347 (May 1984)(ALJ). We affirm the judge's decision.

The violation occurred at P&M's McKinley Mine. The mine includes several surface facilities used in the processing of coal. Among these facilities is a coal transfer building. In this building coal is transferred onto a conveyor belt, and, as a result of the transfer, coal dust enters the building's atmosphere. At the top of the building is the tipple control room. The control room serves as an observation post from which the coal processing operations are

monitored. In the room are two electrical control boxes, the main breaker box and the main crusher box. The main breaker box, as the name implies, contains several circuit breakers. Inside the main crusher box are a motor starter, a small transformer, an overload relay or circuit breaker, and numerous wires. The main breaker box is approximately 2 feet high and 2 feet wide. The main crusher box is approximately 6 feet high and 2 feet wide.

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The citation alleging the violation of section 77.202 was issued on June 9, 1983. The MSHA inspector who issued the citation stated that he observed coal dust in the bottom of each electrical box that the coal dust was black in color, and that it had accumulated in each box to a depth of at least 1/8 of an inch. The inspector considered this amount dangerous in that an electrical malfunction in the control boxes could cause an arc or spark which could, in turn, put the dust into suspension and propagate an explosion.

P&M's electrical foreman and P&M's director of safety training stated that the accumulations of coal dust were not as extensive as indicated by the inspector. They asserted that under normal operating conditions the accumulations would not be dangerous because electrical malfunctions in electrical control boxes are rare and electrical backup systems in both boxes are designed to prevent arcs or sparks in the event of malfunctions.

The judge found that the accumulations existed in both boxes and in the amount described by the inspector. 6 FMSHRC at 1349. The judge also found that energized electrical facilities were present and that faults or failures in such facilities are common occurrences. *Id.* The judge concluded that the existence of accumulations in the presence of potential ignition sources established that the accumulations were "dangerous" within the meaning of the standard. Therefore, he concluded that a violation occurred. *Id.*

Substantial evidence supports the judge's findings concerning the presence of the accumulation. The inspector visually observed and measured the coal dust. P&M's witnesses did not dispute the presence of the coal dust. Rather, they argued that it was not as extensive as the inspector testified. The judge, who heard the witnesses and who had an opportunity to evaluate their testimony first hand, credited the inspector. We find nothing in the record to warrant the reversal of the judge's findings in this regard. *Mathies Coal Co.*, 6 FMSHRC 1, 5 (January 1984).

The inspector also testified that the circuit breakers on the boxes could short circuit and put the coal dust into suspension and thereby propagate an explosion. He further testified that any broken wire in the boxes could ignite the coal dust. MSHA's electrical specialist confirmed that faulty circuit breakers and defects in the wiring could create an ignition source. P&M's electrical foreman did not dispute that the components of the electrical boxes could become ignition sources. When asked if there could be an electrical failure

in the main crusher box which could result in an ignition source, he replied, "Yes ... I guess [there] could." Moreover, he stated that he had twice seen circuit breakers in a main breaker box explode. The foreman emphasized, however, that such occurrences are not common. He stated that there was a backup system to prevent electrical failures. He also stated that it would be "very rare" for the circuit breakers to explode.

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P&M argues on review that the judge erred in finding a violation because the judge did not require the Secretary to establish the existence of a present, actual ignition source in the vicinity of the accumulation at the time of the inspection. Rather, the judge concluded that under section 77.202, if a "potential" ignition source is present in the vicinity of an accumulation, the accumulation is dangerous within the meaning of the standard. 6 FMSHRC at 1349. We agree with the judge's conclusion. It is well established that the Mine Act and the standards promulgated thereunder are to be interpreted to ensure, insofar as possible, safe and healthful working conditions for miners. *Westmoreland Coal Co. v. Federal Mine Safety and Health Review Commission*, 606 F.2d 417, 419-20 (4th Cir. 1979); *Old Ben Coal Co.*, 1 FMSHRC 1954, 1957-58 (December 1979). Section 77.202, like most coal mine safety standards, is aimed at the elimination of potential dangers before they become present dangers. Thus, we conclude that the judge did not err in seeking to determine whether, under the circumstances, an ignition could have occurred and that his finding of a violation is supported by substantial evidence.

Accordingly, the decision of the administrative law judge is affirmed. 1/

Richard V. Backley, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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

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