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SOL: (MSHA) V. U.S. STEEL MINING  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. PENN 86-204  
A.C. No. 35 05018-03614

v.

U.S. STEEL MINING COMPANY,  
INC.,

CONTEST PROCEEDING

RESPONDENT

Docket No. PENN 86-180-R  
Citation No. 2678490; 4/28/86

U.S. STEEL MINING COMPANY,  
INC.,

Cumberland Mine

CONTESTANT

v.

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

DECISION

Appearances: Susan M. Jordan, Esq., Office of the Solicitor,  
U.S. Department of Labor, Philadelphia,  
Pennsylvania for the Secretary of Labor;  
Billy M. Tennant, Esq., Pittsburgh,  
Pennsylvania for U.S. Steel Mining Company,  
Inc.

Before: Judge Melick

These consolidated cases are before me under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," to challenge a citation issued by the Secretary of Labor on April 28, 1986, to U.S. Steel Mining Company Inc., (U.S. Steel) and for review of civil penalties proposed by the Secretary for the violation alleged therein. The issues before me are whether U.S. Steel violated the regulatory standard as alleged and if so whether that violation was of such a nature as could have significantly and substantially contributed to the cause and effect of a coal or other mine safety or health hazard, i.e. whether the violation was "significant and substantial." If the violation is established it will also be necessary to determine the appropriate civil penalty to be assessed in accordance with the criteria set forth in section 110(i) of the Act.

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The citation at bar, No. 2678490, alleges a "significant and substantial" violation of the standard at 30 C.F.R. 75.1725(a) and charges as follows:

The belt tail roller that was located at the 5 Face South No. 2 in-line drive was not maintained in a safe operating condition on the afternoon shift of January 28, 1986 and midnight January 29, 1986 due to the bearings on the subject roller was [sic] running hot and smoking at one point.

The cited standard provides that "mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately."

The evidence shows that as Anthony Shiner, a General Inside Laborer at the Cumberland Mine, was cleaning along the subject beltline on his afternoon shift he heard a loud thrashing noise, vibration and the sound of metal grinding in the bearings of the tail roller. Shiner also saw smoke coming from the tail roller and the smoke filled "half the entry." He immediately shut down the belt and called the afternoon shift Foreman Ed Grim to report the problem. (FOOTNOTE 1)

Mechanic Douglas Carpenter and his Supervisor, Jerry Seaton, subsequently examined the problem bearing, cooled it with water and greased it. Shiner then rigged a hose to maintain a cooling water spray onto the subject bearing, and the belt was restarted. Carpenter and Seaton watched the belt

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run for an hour and, since the bearing was holding up "okay," they left. Seaton nevertheless told Shiner to maintain a watch on the suspect bearing for the rest of his shift, to keep grease in it and to maintain the cooling water spray. The bearing continued to operate normally for the remainder of Shiner's shift until Harry Siebold took over the watch around 10:30 p.m. on the 28th.

According to Shiner the area surrounding the suspect bearing was kept clear of loose coal and coal dust, was rock dusted and was wet from the hose spray. Additional bags of rock dust were available nearby if needed. The evidence also shows that an emergency pull cord ran along the entire belt line and could be reached by anyone nearby to cut off power to the belt within 15 to 30 seconds. There was also a fire protection system that would deluge the belt when triggered by a heat sensor. A chemical fire extinguisher and a mine telephone were also nearby.

Beltman Jimmy Perani was assigned to stand watch over the subject bearing on the midnight shift (11:00 p.m. to 7:00 a.m.) beginning January 28. Harry Siebold was standing watch when he took over. The belt continued running during Perani's shift with water spraying on the subject bearing. Perani observed however that the bearing was generating heat and would occasionally make "loud screaming noises." In addition according to Perani the bearing would not hold grease. Perani testified that no one relieved him at the end of the shift.(FOOTNOTE 2)

General Inside Laborer Clyde King testified that his Foreman, Gene Barno, told him to watch the subject bearing on the midnight shift of January 29. King was told to leave the water running over the bearing and was told that he would be relieved at quitting time. King relieved someone else

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(apparently Perani) who had been standing watch. According to Inspector Conrad, King stated in an interview on February 12, 1986, that he had been assigned at 6:00 a.m. on January 29, to relieve the person then standing watch and remained to the end of his shift at 7:45 a.m. In light of this statement to Conrad given closer to the time of the event I find this version of events to be the more credible. King testified without contradiction however that when he left his assigned position at the end of his shift no one relieved him. It is therefore undisputed that the suspect roller was thus left unattended while the belt continued to operate.

King also observed that the maintenance foreman examined the suspect bearing during his shift and admitted that it was "bad" and would have to be replaced. King observed that when the water spray was removed the bearing would get hot and sparks would appear. So long as the water spray was maintained however there were no sparks and nothing was "abnormal."

Mine Manager Weir acknowledged to Inspector Conrad on February 12, 1986, that the bearings had subsequently been removed and were found to be scarred and flat. Conrad opined, based on that statement, that the bearings had been running in a hazardous condition. Conrad considered the violation to be "significant and substantial" in that he felt that fire and smoke could have been generated by the defective bearings thereby creating carbon dioxide, fire and smoke inhalation problems. Indeed Conrad opined that if the bearing began smoking heavily it would be reasonably likely to overcome the miner standing watch before he could stop the smoke. He opined that it was also reasonably likely for the smoke to be taken in by miners working at the longwall face.

Conrad also believed that fire was reasonably likely even though the hose was spraying on the bearing if there was coal spillage up to the level of the bearing. In addition during the time that the bearing was left unattended he felt that a rock could displace the water flow thereby creating the noted hazardous conditions. Conrad also observed that bearings operating in the noted condition could disintegrate at any time causing the tail roller to come loose with hot metal splattering all over. Conrad found the operator's negligence to be moderate because he felt that the operator knew of the violative condition but tried to remedy the violation by stationing an observer and hosing-down the defective bearing.

Underground mine superintendent Mark Skiles learned of the problem bearing through a phone call from his shift clerk around 9:30 p.m. on January 28. According to Skiles, failed bearings are not unusual and it is standard procedure to cool them down and pump them full of grease until they can be

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replaced. He acknowledged that if the bearing was running hot it could ignite loose combustible material or coal dust if it was in contact. It was his understanding however that in this case the bearing was not in contact with any flammables and indeed the tail piece was located in a puddle of water. Skiles acknowledged that his opinion concerning the nonhazardous nature of the problem bearing was based on his assumption that someone was always in attendance to watch the roller and shut down the belt line.

When Skiles arrived at the mine at 8:00 a.m. on January 29, he was told that the roller was "running cool but failing." He then directed that the bearing be changed and it was in fact changed sometime between 10:00 a.m. and 2:00 p.m. on that day. Skiles did not immediately replace the bearing but wanted to keep the belt running until the maintenance shift scheduled for the coming weekend. The bearing was changed earlier because "everything was in place" and it was "obvious that we were not going to make it to the weekend."

Assistant Maintenance Foreman Jerry Seaton learned of the problem bearing around 4:00 p.m. on January 28, 1986. He and Carpenter pumped it full of grease and Shiner was directed to stay in the area and apply grease every 20 minutes. A 3/4 inch hose was also set to spray water on it. According to Seaton the area surrounding the subject bearing was damp and well rock dusted. There were additional bags of rock dust within 20 to 30 feet and a "pager" within 30 feet. There were no "squeeking noises" or sparks emanating from the bearing and Seaton found the condition not to be unsafe.

Afternoon Mine Foreman Charles Grim became aware of the subject bearing between 3:00 and 3:30 p.m. on January 28. Grim also thought that the condition was not unsafe because someone was in attendance to shut the belt down if necessary, to keep it greased, and to maintain a cooling water spray. He also observed that the area was wet and rock dusted.

Ronald Stull, the afternoon shift Belt Foreman, assigned Harry Siebold to replace Shiner at the end of his shift on January 28. Stull acknowledged that if the bearing had been "sparking" he would have shut the belt down because it would have been a fire hazard. He did not recall that anyone told him about sparks coming out of the bearing.

Eugene Barno the third shift Mine Foreman, was told that grease was being pumped into the subject bearing every 20 minutes, that it was holding grease, and that it was being cooled down with water. He visited the problem bearing during his shift when he brought Perani to take over the watch. Barno touched the bearing and found it to be "room temperature." It was also then holding grease. He

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instructed Perani to shut the belt down if it became hot. Perani was still watching the bearing when Barno returned around 6:00 a.m. bringing his relief-man Clyde King. Perani told him there had been no problems. Barno testified that the belt continued to run when he left his shift at 8:00 a.m. and he did not know who shut down the belt thereafter or who relieved Clyde King to watch the bearing on the next shift.

Within the above framework of evidence it is clear that the tail roller on the cited belt was not being "maintained in safe operating condition" as required by the cited standard. Based on the undisputed evidence alone it is clear that the bearings on both sides of the tail roller shaft were being operated for some period of time while scarred and flattened. Even Superintendent Mark Skiles acknowledged that the bearing had already "failed" by the time he received the phone call on January 28. Skiles observed that when the shaft starts to wobble with a defective bearing on one side, the bearings on the other side are also ruined. Skiles further observed that if the shaft starts to wobble because of bad bearings the entire tail piece could be torn up. This is consistent with the testimony of Inspector Conrad that if the roller continues to operate with defective bearings it could suddenly disintegrate and splatter hot metal all over.

This condition clearly presented a serious hazard to the miners standing watch over the defective bearing and who were required to grease that bearing every 20 minutes while the belt was in operation. Under the circumstances there is sufficient evidence from which it may be concluded that it was "reasonably likely" for the tail piece to "disintegrate" and seriously injure the watchman with flying hot metal. Accordingly there was a "significant and substantial" and serious violation of the cited standard. Secretary v. Mathies Coal Co., 6 FMSHRC 1 (1984). In addition there was at least one period of time (following Clyde King's watch) during which no one was keeping watch over the subject bearing. Thus the hazard from fire and smoke described by Inspector Conrad was reasonably likely without the availability of someone to signal an alarm and/or remedy the hazard. For this additional reason I find the violation to be "significant and substantial" and serious. Mathies, supra.

The fact that the mine operator kept the area around the subject bearing clean, wet and rock dusted, and that it maintained partial watch over the subject bearing may be considered in mitigation of negligence. In assessing a penalty herein I have also considered that the operator is large in size, has a substantial history of prior violations, and abated the condition even before it was cited by MSHA or was the subject of the "103(g)" complaint. Under the circumstances a civil penalty of \$200 is warranted.

ORDER

Citation No. 2678490 with its "significant and substantial" findings is hereby affirmed. The Contest Proceeding is dismissed and U.S. Steel Mining Company Inc. is directed to pay a civil penalty of \$200 within 30 days of the date of this decision.

Gary Melick  
Administrative Law Judge

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FOOTNOTE STARTS HERE

~FOOTNOTE\_ONE

1 While Shiner testified at hearing that these problems developed on the afternoon shift of January 27, 1986 and continued through the afternoon shift on January 28, I believe for the reasons noted below that this recollection was erroneous. First, MSHA Inspector James Conrad testified that he interviewed Shiner on February 12, 1986, shortly after the incident in question, and Shiner then told him that the problem had begun on his afternoon shift on January 28. Second, the "section 103(g)" complaint filed with MSHA by the Union Safety Committee (Court Exhibit 1) and the citation at bar prepared by Inspector Conrad both contain allegations that the problem began on the afternoon shift of January 28 and continued only through the midnight shift of January 29, 1986. Third, Shiner's testimony is also inconsistent with the testimony of government witness Clyde King and U.S. Steel witnesses Mark Skiles (Mine Superintendent), Larry Seaton (Assistant Maintenance Foreman), Charles Grim (the afternoon shift Mine Foreman), Ronald Stull (afternoon shift Belt Foreman), Eugene Barno (third shift Mine Foreman), and Dan Laurie (afternoon shift Belt Cleaner Foreman).

~FOOTNOTE\_TWO

2 Perani was confused at hearing as to which particular shift or shifts he stood watch over the subject bearing and was unclear whether he first stood watch on midnight of January 27 or midnight of January 28. According to the testimony of Anthony Shiner it was Harry Siebold who took over his watch on the bearing at around 10:30 p.m. the evening of January 27. Although Siebold did not testify in these proceedings it appears that Siebold took over the watch from Shiner at about 10:30 on the evening of January 28, (see footnote 1) and Perani then took over from Siebold at around 11:00 p.m. the same night. Indeed Perani recalls that he did relieve Siebold on January 28. Perani's testimony at hearing concerning "loud screaming noises" emanating from the bearing is also in contrast to his statement to Inspector Conrad that he heard "squeeking" noises.