

CCASE:  
SOL (MSHA) v. ZEIGLER COAL  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, Virginia 22041

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

v.

ZEIGLER COAL COMPANY,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. LAKE 91-683  
A. C. No. 11-00612-03556

Spartan Mine

PARTIAL DECISION

Appearances: Rafael Alvarez, Esq., U.S. Department of Labor,  
Office of the Solicitor, Chicago, Illinois,  
for Petitioner;  
Gregory S. Keltner, Esq., Zeigler Coal Company,  
Fairview Heights, Illinois, for Respondent.

Before: Judge Weisberger

Statement of the Case

Pursuant to a request by the parties, this case is severed  
from Docket No. LAKE 91-29 et al.

In this civil penalty proceeding the Secretary (Petitioner)  
seeks civil penalties for alleged violations by Ziegler Coal  
Company, (Respondent) of various mandatory standards set forth in  
volume 30 of the Code of Federal Regulations. Pursuant to notice  
the case was heard in St. Louis, Missouri on December 17, 1991.  
At the hearing Ronald Sara testified for Petitioner, and Byford  
Carl Reidelberger testified for Respondent. The parties waived  
the opportunity to submit post-hearing briefs.

Citation No. 3847632

I.

The parties stipulated as to the following facts:

On April 15, 1991, Inspector Ronald Zara [sic] of the  
Federal Mine Safety and Health Administration conducted  
an inspection at the 2nd main west off main south (unit  
3). During the course of the inspection the inspector  
found that the tram pedal (deadman pedal)

of the joy continuous miner (serial no. JM 3729) was stuck in the tram position. The machine could be moved without pushing the pedal and would continue to tram when the deadman pedal was released. The tram levers were operating properly and would stop the machine when released and the panic bar was operating properly and would de-energize the tram motors when activated. This machine comes from the manufacturer with the deadman pedal installed and was approved with it. Two persons were in the area. The inspector issued Citation No. 3847632 for an alleged violation of 30 C.F.R. 75.1725(a). Respondent showed good faith in terminating the violation by having the switch cleaned and lubricated and restored in proper operating condition. (Joint Exhibit No. 1, paragraph 9)

According to Sara the purpose of the deadman's pedal is to prevent inadvertent contact by the operator of the continuous miner ("miner") with the tram levers which could cause the miner to unexpectedly move left or right. Sara explained that because the mine floor is muddy, the operator, upon entering the cab with mud on his shoes, could slip on the metal floor of the cab. Sara opined that should the operator thus stumble or fall, inadvertent contact with the levers could occur, especially considering the "close quarters" of interior of the cab of the continuous miner, which be also described as being "very tight" (Tr. 41,42).

On cross-examination Sara conceded that simply touching the tram levers is not sufficient to move them, as there must be pressure applied to push or pull the levers to cause the miner to go forward or backward. Sara further indicated on cross-examination that when removing pressure on the deadman pedal, the miner cannot be trammed either forward or reverse, but it does not become de-energized. Accordingly it is still possible to rotate the drum, and swing the tail of the miner. Both these actions have a potential of causing an injury.

Byford Carl Reidelberger, the superintendent of the subject mine, testified that the continuous miner in question at times is operated from a remote position even while the operator is inside the cab, and as such, the deadman pedal is bypassed. He further testified that, originally, the purpose of the deadman pedal was to protect the operator of the miner from being injured as a consequence of losing consciousness and thus being unable to stop the movement of the miner. According to Reidelberger, before self-centering levers were required, if pressure was released from a tram lever upon the operator losing consciousness, the lever would not have returned to neutral and the miner would have continued to tram.

Reidelberger indicated that, at present, the deadman pedal is no longer necessary as miners are equipped with panic bars and

self-centering levers. Activating the panic bar immediately stops the motion of the miner. In the same fashion, if pressure is released from a tram lever that was in a forward or reverse position, the lever automatically immediately returns to neutral and the motion of the miner immediately stops. Thus, in Reidelberger's opinion, the miner that was cited was not unsafe, even though the deadman pedal did not operate as designed.

II.

Section 75.1725 supra provides, in essence, that machinery and equipment ". . . shall be maintained in safe operating condition and the machinery or equipment in unsafe condition shall be removed from service immediately." Webster's Third New International Dictionary, (1986 edition) ("Webster's") defines "safe" as "2. Secure from threat of, danger, harm or loss:", Webster's defines "Secure" as "2 a: free from danger "Danger" is defined in Webster's as "3. liability to injury, pain, or loss: PERIL, RISK. . . . "

Based on the testimony of Sara, I find that, because the deadman pedal was stuck, miners were exposed to the risk of injury from unexpected movement of the miner caused by inadvertent contact with the tram levers. In this connection, Sara explained that miner operators are now accustomed to stepping on the deadman pedal in order to operate the tram levers, and that accordingly, if the deadman pedal is not depressed, it is expected that contact with the levers would not cause the miner to tram. Hence, Sara opined that should the levers be inadvertently pushed at a time when the deadman pedal is stuck, the resulting movement of the miner would be unexpected, thus causing the risk of an injury either to the operator located in the cab, or to the assistant working alongside the miner. In this connection, Sara explained that the assistant works in a close, confined area, inasmuch as there is usually less than 5-foot clearance on each side of the miner. Thus, according to Sara, sudden movement by the miner, left or right, could result in a injury. I accept Sara's testimony in this regard as it was not rebutted or impeached. Hence, applying the common usage of the term "safe" as defined in Webster's infra I conclude that the miner in question was not in safe operating condition. Since it was in operation, I find that Respondent herein did violate Section 75.1725 supra.

III.

Petitioner did not adduce any evidence of negligence on the part of Respondent in connection with the violation herein. Also, considering the statutory factors set forth in Section 110(i) of the Act as stipulated to by the parties, I conclude that a penalty of \$20 is appropriate for this violation.

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Citation No. 3847638

At the hearing Petitioner moved to approve a settlement agreement with regard to Citation No. 3847638 and indicated that Respondent agreed to pay the assessed violation of \$20. I have considered the representations and documentation submitted on behalf of the motion, and I conclude that the settlement is appropriate. Hence, the Motion to Approve Settlement is granted.

Citation No. 3847637

At the hearing the parties moved that further proceedings concerning Citation No. 3847637 be stayed on the grounds that the identical issue involved in this citation is pending before another Commission judge who has already held a hearing on this issue. Accordingly it is ORDERED that further proceedings on Citation No. 3847637 be stayed pending a Decision by Judge Koutras in Docket No. LAKE 91-635.

ORDER

It is ORDERED that Respondent pay \$40 as a civil penalty for the violations found herein.

Avram Weisberger  
Administrative Law Judge