

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **13-MSRC-071**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

FINAL ORDER

**DARRELL JONES &
TONY STACY**

RESPONDENTS

PROCEDURAL HISTORY

This case comes before the Commission as result of a reported accident to the Office of Mine Safety and Licensing. The accident occurred at the McCoy Elkhorn Mine 23 in Pike County Kentucky on 24 June 2011. The accident occurred when a continuous miner (CM) injured the operator by striking him with the tail piece during operation. Office of Mine Safety and Licensing (OMSL or Petitioner) alleged a roof control plan violation based upon KRS 352.201(1) and Notice of Non-Compliance No. 1175-009.

A hearing was held on January 9, 2014 with 2 Commissioners present. The OMSL was represented by Samuel J Ottley who presented 2 witnesses from OMSL and the Respondents were represented by Billy Shelton and both Respondents testified. Notice and jurisdiction were not contested and thus deemed admitted.

FINDINGS OF FACT

Petitioner OMSL called Randy Bentley, Roof Control Specialist with the Pikeville Office of OMSL. Mr Bentley has 20 years experience as an inspector.

Bentley testified that he and Tim Fugate, another OMSL Inspector were called to the mine as result of a reported accident. He stated that Respondent Jones , the operator, was pinned between the inby rib of coal and the CM. The CM had cut #8 heading on the right side of the super unit (2 operating CMs) and trimmed through the cross cut to the #9 heading to trim the mine floor to #9 to eliminate a ledge. The cross cut between #8 and #9 was down dip or grade from #8 to #9 and down dip from outby to the inby side.

Bentley said Jones was standing by the inby side of the CM which put him down dip. Bentley stated Jones was in the "Red Zone", a prohibited area of operation at that time for the operator. Bentley stated Respondent Stacy, the Section Foreman was in the #2 heading of the unit and was at least 300 feet away at the time of the accident.

Upon cross examination, Bentley testified all training records at the mine were up to date, including training concerning the "Red Zone". He testified Stacy was not around the accident scene when the accident occurred, but was on the unit. He also stated he was at least 300 feet away when the accident occurred. Bentley stated Stacy did not order Jones into the "Red Zone".

Of particular importance, Bentley, upon Cross Exam, stated Stacy was not "unworthy" of holding a Mine Foremans certificate.

Claimant next called Timothy L. Fugate, an Accident Investigator for OMSL with 27 years of service. Mr Fugate said upon arriving at the mine, he issued a closure order. His investigation of the accident scene on the unit

revealed rock dust was smeared at the site of the accident (where Jones was pinned to the rib by the CM tailpiece) in the cross cut between #8 and #9 headings.

Mr Fugate testified about the “Red Zone” being a prohibited area around an operating CM, with the exception of when the CM is “sumped up” and is physically restrained from lateral movement by the coal strata.

Mr. Fugate testified about the initiative to do safety training as a result of a “Red Zone” accident in March 2011 in the Martin District of OMSL. An Analysts Report for “Red Zone” training was introduced as Claimants Ex 1 for the McCoy Elkhorn mine, which was conducted 13 April 2011. Both Respondents attended this meeting.

Next, Mr Fugate was allowed to introduce the Notice Of Non-Compliance/Closure Order as OMSL’s Exhibit 2 over the objection of Counsel for the Respondents based on the fact that the roof control plan which was the basis for the violation was not introduced and was not available. However it was undisputed that a roof control plan was in existence at the time of the accident and that it did cover the “Red Zone”.

Mr. Fugate stated that the Section Foreman was not at the accident scene, but was on the unit. As to the issue of “unworthiness”, Mr Fugate acknowledged that Mr Stacy has continued as a Mine Foreman for 3 years following the accident. Mr. Fugate testified that when a new remote control unit was brought to the CM, the CM had no operational problems. The remote that

Jones was operating and holding at the time of the accident was destroyed by the tailpiece striking Jones.

Claimant rested its case.

Counsel for the Respondents called Respondent Tony Stacy. Mr Stacy stated he had 24 years mining experience; 18 as a Mine Foreman. He stated he was trained and had been specifically trained regarding "Red Zone" safety. Mr. Stacy testified he was 2 cross cuts outby in the #2 heading on the unit at the time of the accident. He was not at the accident scene, but on arrival, stated Jones was out from the CM and said he was "OK". Jones was sent out of the mine to the hospital. Stacy said Jones was a good miner operator. He testified that Jones was "trimming" not "tramming" the CM at the time of the accident. The distinction being the CM was not moving on its crawlers - tramming - at the time of the accident, but the CM cutter head was operating at the time - trimming.

Mr. Stacy testified there were no Federal (MSHA) violations written about the accident. Stacy did not order Jones into the "Red Zone". He also stated he would do anything to prevent an accident.

Counsel for Respondent then called Respondent Darrell Jones. Mr. Jones stated he had 28 years mining experience with 20 years operating a CM. Mr. Jones described the accident as follows: He trammed the miner into the cross cut between #8 and #9 headings to cut a ledge where the cross cut entered #9 heading that was made when #9 was cut ahead. The CM was

skewed in the cross cut with the cutter head angled toward the inby rib toward #9 entry and the rear bumper of the CM was angled toward the outby rib toward #8 entry. Jones was behind the miner on the inby rib toward #8 entry. He stated when he started the cutting head to cut the ledge or bench, the miner caught and kicked (slid) toward him. The tailpiece (conveyor boom) of the CM, which was positioned toward him pinned him (Jones) against the inby rib of coal. The miner also hit and crushed the remote control unit that Jones was using to operate the CM. Mr. Jones stated he thought he was outside the "Red Zone". He also stated he didn't know why he didn't get back out of the way of the CM.

The Commission takes notice that Jones suffered a fractured pelvis as a result of being struck by the CM.

After considering the evidence presented at the administrative hearing, the Commission submits the following Findings of Fact, Conclusions of Law, and Final Order.

CONCLUSIONS OF LAW

The criteria for the imposition and enforcement of sanctions against certified miners is contained in 805 KAR 8:030, which provides for the enforcement against certified miners whose intentional violation of mine safety laws places miners in imminent danger of serious injury or death.

As defined in KRS 352.010(O), "Imminent danger" means the

existence of any condition or practice which could reasonably be expected to cause death or serious physical harm before the condition or practice can be abated.

This Commission's criteria for imposing penalties against certified miners is set forth in 825 KAR 1:030, as follows:

- (1) Cooperation with investigators;
- (2) The severity of the harm done, such as whether the offense resulted in:
 - (a) Death;
 - (b) Serious physical injury; or
 - (c) The placement of an individual in imminent harm;
- (3) Acceptance of responsibility for actions;
- (4) History of violations;
- (5) Adjudicated violations in other states;
- (6) Mitigating circumstances; and
- (7) Aggravating circumstances. (29 Ky.R. 201; Am. 1272; eff. 11-12-02).

KRS 352.390 states:

The Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the Board that the holder has become unworthy to hold the certificate by reason of violation of law...failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause.

KRS 352.340 provides in part:

The mine foreman...shall give prompt attention to the removal of all dangers reported to him... he shall notify every person whose safety is menaced thereby to remain away from ... the dangerous condition....

KRS 352.350(3) provides:

The mine superintendent, mine foreman and assistant mine foreman shall be held jointly responsible for the immediate compliance with the provisions of KRS Chapter

351 and this chapter.

Based upon all of the findings of fact set forth above, the members of Mine Safety Review Commission submit the following Conclusions of Law:

As to Tony Stacy; it is physically impossible for a Mine Foreman or Section Foreman to be with every person on an operating section or unit, even though the Foreman is charged with the responsibility for the safety of the unit. However he must intentionally set the standard for safety by his leadership and presence where necessary. In this case the trimming with the CM was not an every day occurrence and thus warranted more attention by the foreman.

As to Darrell Jones; even though Jones *thought* he was doing everything right he was in fact in the prohibited "Red Zone" of the CM. The Commission does not believe this was done with forethought because nobody wants to get hurt. However it appears that he intentionally moved into the prohibited "Red Zone" because of his focus on trimming and not on safety. Additionally the fact that Jones was injured is "Prima Facia" that he was in the "Red Zone".

FINAL ORDER

The General Assembly has declared in KRS 351.101 that the highest priority is the safety of the coal industry's most valuable resource, the miner. Coal production is important to this state and a high priority must be given to increasing productivity and competitiveness. Mine safety can be improved by

enforcement of sanctions against certified personnel whose actions violate mine safety laws and place miners in imminent danger of serious injury or death. KRS 351.241, Section 6, notes that "The American zeal for work and productivity very frequently causes the miner to give second priority to normal safety measures and precautions."

In the case now before the Commission, it is realized by the Commission that a superintendent of a mine has primary responsibility for the operation of the mine and the safety of the men working there. While it is difficult to see that everything is working in a safe manner but it has to be done.

The Commission considered all the factors set forth in 825 KAR 1:030, and while Respondents were cooperative and credible there was an injury (2)(b) & (c) and resistance to the acceptance of the violations(3).

THEREFORE, IT IS HEREBY ORDERED, Darrell Jone's certifications shall be placed on **probation** for a period of one (1) year and this shall be deemed a first offense pursuant to 805 KAR 8:010 Section 1 (5). Tony Stacy's certifications shall be on **probation** thirty (30) days and this shall *not* be deemed a first offense.

THIS IS A FINAL AND APPEALABLE ORDER. Pursuant to KRS 351.194(8), an appeal of this Final Order shall be filed in the Franklin Circuit Court within thirty (30) days of the entry of this order.

SO ORDERED, this the 13TH day of February, 2014.



WILLIAM D. DONAN
COMMISSIONER, CHAIRPERSON



DAVID BRIAN SLOAN
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was mailed, by certified mail and by regular mail, postage pre-paid to the following this 14TH day of February 2014:

HON. BILLY SHELTON
151 N. EAGLE CR. DR. STE 310
LEXINGTON, KY 40509

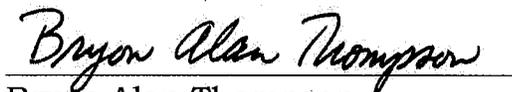
Counsel for Respondent

And by messenger mail to:

HON. SAMUEL J. OTTLEY III
OFFICE OF GENERAL COUNSEL
#2 HUDSON HOLLOW
FRANKFORT KY 40601

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601



Bryon Alan Thompson
General Counsel
Mine Safety Review Commission