

INTERIOR BOARD OF LAND APPEALS

PacifiCorp

132 IBLA 98 (February 22, 1995)

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PACIFICORP

IBLA 93-632

Decided February 22, 1995

Appeal from a notice of noncompliance issued by the Moab Associate District Manager, Bureau of Land Management, requiring, in part, payment of full value for coal not mined in conformity to plan. UT-SL-070645.

Notice vacated.

1. Coal Leases and Permits: Generally—Coal Leases and Permits: Leases

Neither the Mineral Leasing Act, 30 U.S.C. § 207(a) (1988), nor coal exploration and mining operations rules codified at 43 CFR Part 3480 authorize BLM to require a Federal coal lessee to pay for the full value of coal by-passed during mining operations; furthermore, in the absence of a lease provision authorizing such a penalty, it may not be imposed, regardless of whether there has been a deviation from the applicable mine plan of operations.

APPEARANCES: John S. Kirkham, Esq., Salt Lake City, Utah, for PacifiCorp; David K. Grayson, Esq., Assistant Regional Solicitor, Intermountain Region, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

PacifiCorp has appealed from a July 26, 1993, notice of noncompliance issued by the Moab Associate District Manager, Bureau of Land Management (BLM). The notice found that mining practices followed by PacifiCorp at Cottonwood Mine on coal lease No. SL-070645 between February and July 1992 were inconsistent with provisions of the Cottonwood Mine Resource Recovery and Protection Plan relating to coal recovery at the 10th Right longwall panel between crosscuts 14 and 20 in the 2nd North area of the Cottonwood Mine. Finding that the failure by PacifiCorp to follow the Plan had resulted in waste of the coal resource, BLM required that PacifiCorp either pay the full value of the by-passed coal or, alternatively, submit a plan for mining the coal using room-and-pillar methods instead of the longwall method previously used in the area.

The notice of noncompliance was based on a staff report dated July 13, 1992, that analyzed mining conditions and practices followed by PacifiCorp at the Cottonwood Mine to conclude that an estimated 20 to 40,000 tons of Federal coal (depending on the method of extraction used) would not be mined if PacifiCorp were to leave coal reserves in the 10th Right longwall panel, as it proposed to do, and move its operations into another area of the mine (BLM Study at 2-4). In July 1992 the mining equipment in use at the 10th Right panel was moved and work began on the 11th right longwall panel (see BLM Answer at 14). This action may have made recovery of the coal remaining in the 10th Right panel infeasible by any means. Id. at 15.

PacifiCorp objects that it may not legally be required to pay the full value of coal left in the 10th Right longwall panel as a penalty for alleged failure to follow the mining plan. Citing Cordero Mining Co., 121 IBLA 314 (1991), and Utah Power & Light Co., 118 IBLA 181 (1991), PacifiCorp argues that either payment of full value of the coal or payment of the cost to prepare a plan for operations to remove coal remaining in the 10th Right longwall panel by room-and-pillar methods using a continuous miner would subject PacifiCorp to an unauthorized punishment. It is also argued that conditions in the 10th Right longwall panel do not presently permit safe removal of remaining coal, and that PacifiCorp operations have been conducted in conformity to the mining plan and have already exceeded estimates of the quantity of coal constituting maximum economic recovery (MER), as that term is defined in 43 CFR 3480.0-5(a)(21). PacifiCorp argues that its operations in the mine have been conducted to prevent waste, conserve the coal resource, and achieve MER.

By letter dated February 19, 1992, reciting adverse geologic conditions, PacifiCorp sought agreement by BLM that remaining coal in the 10th Right longwall panel need not be extracted. On April 14, 1992, BLM agreed that the 10th Right longwall panel

cannot be longwall mined. However, a block of coal still remains in the panel adjacent to the 10th Right entries between crosscuts 14 and 20. * * * BLM personnel did not see the adverse roof conditions between crosscut 14 and 20 as were observed near the channel margin past crosscut 20. Before the BLM can authorize abandonment of the entire 10th Right panel, PacifiCorp must submit further justification for not recovering this block of coal.

(Statement of Reasons (SOR), Exh. H at 2).

On May 27, 1992, additional mining and geologic data were presented to BLM by PacifiCorp in support of the request to be permitted to leave remaining coal reserves in the 10th Right longwall panel. BLM rejected this data, concluding that "the justification provided does not explain why the reserves in question are not recoverable with a continuous miner" (SOR, Exh. J at 2, 3). Also rejecting the contention by PacifiCorp that the mine plan did not contemplate use of continuous miners for room-and-pillar mining operations such as BLM proposed for the 10th longwall, BLM found that "[t]he

approved [mining plan] clearly states that 'in those areas where longwall mining is not practicable, room-and-pillar sections are developed as production sections for continuous mining units.'" Id. at 3.

Following a meeting between BLM and PacifiCorp employees on August 11, 1992, PacifiCorp sent BLM a letter dated August 21, 1992, offering new information in support of the request to by-pass the 10th Right panel coal. Citing past mining experience in the Cottonwood Mine, PacifiCorp offered the opinion of a mining engineer cautioning against room-and-pillar mining at depths greater than 1,500 feet, such as would be encountered if the subject reserve block were mined, and renewed the request that it not be required to recover the block of coal in the 10th Right longwall panel (SOR, Exh. M at 3, 4).

On November 12, 1992, BLM analyzed the additional information supplied by PacifiCorp; BLM considered geologic conditions, the effect of mining below 1,500 feet on multiple-seam loading and stress distribution conditions, room-and-pillar mining in the area, and longwall development timing. BLM then concluded that PacifiCorp had not shown the reserves in the 10th Right longwall should not be mined. PacifiCorp was therefore required to submit a mining plan for recovery of the reserves in question (see SOR Exh. N). By letter dated December 16, 1992, PacifiCorp reiterated the position that recovery of the 10th Right reserves by room-and-pillar methods using a continuous miner would be unsafe and argued that removal of the coal at issue should not be attempted because "[a]dequate safety cannot be provided by taking risks in unpredictable mining areas such as the 10th Right longwall panel." Id. at 6.

To support the contention that refusal to mine the 10th Right longwall panel reserves using room-and-pillar extraction methods is consistent with the mining plan, PacifiCorp states that, on February 22, 1989, it submitted a revision to the mining plan of operations that was approved by BLM. As revised, the plan states concerning mining methods that:

The planned mine development sequence accommodates longwall panels as the primary means of efficiently extracting the reserves. Longwall mining systems are far superior to other mining methods in terms of overall coal recovery, safety, consistent coal quality, and operational efficiency. In areas of the mine where overburden, coal quality, or ground conditions are a concern, only longwall systems will be employed to extract the reserves. This will ensure the best possible means of maximizing reserve recovery while maintaining consistent coal quality and ground control.

* * * * *

In those areas where longwall mining is not practicable and economic conditions are favorable, room-and-pillar sections may be developed as production sections for continuous mining units.

(SOR, Exh. C at 3-4 through 3-5, 3-8).

Further modification of the mine plan was proposed in a letter from PacifiCorp to BLM dated September 25, 1991, that projected development of mining into the 2nd North area and proposed exploration development of the 10th Right panel (SOR Exh. D at 1, 2). On October 10, 1991, BLM approved the proposal, stating that "[t]he proposed mining and panel layout is approved * * *. A general modification is hereby granted for the 10th Right longwall panels. Should mining encounter unminable conditions in the channel area, PacifiCorp must contact the BLM for verification."

[1] The Cordero and Utah Power cases, cited above, arose when BLM attempted to assess Federal coal lessees the royalty value of by-passed coal, under circumstances similar to those found in this case; both cases found that BLM lacked authority to require the lessees to pay royalty on coal left in the mine, because legal authority for such punitive action could not be found in the Mineral Leasing Act. See Cordero Mining Co., 121 IBLA at 319. Nor, relevant to this appeal, does that statute provide authority for collection of the full value of by-passed coal from Federal coal lessees. See 30 U.S.C. § 207(a) (1988). While the statute does allow the Department to establish leasing terms and conditions that might conceivably include such sanctions, no such provision has been cited by BLM. Instead, seeking to find support for the proposed penalty in a Departmental regulation, BLM invokes 43 CFR 3480.0-6(d)(5). While this provision of Departmental regulations governing operations in coal mines requires enforcement of, among other matters, provisions of leases governing coal operations, no provision of the PacifiCorp lease (SL 070645) is cited that authorizes assessment of the full value of by-passed coal left as a result of deviation from the mine operating plan. It must be concluded, therefore, that PacifiCorp may not be required to pay the full value of coal left in the 10th Right panel because such a penalty is not shown to be authorized in this case.

As was observed in Cordero, once having found that the penalty sought to be applied by BLM went beyond the authority of the agency to impose (regardless whether or not there was a deviation from the mine plan), we do not reach questions posed concerning whether failure to mine the remaining coal left in the 10th Right panel amounted to waste of the resource or whether the principle of MER was violated when PacifiCorp moved its equipment to another area before mining the 10th Right longwall panel. See id. 121 IBLA at 319. Insofar as the alternative requirement stated in the notice of noncompliance is concerned (that PacifiCorp furnish a plan for mining the by-passed coal by room-and-pillar methods), such a requirement is not consistent with the finding by BLM that PacifiCorp is presently in violation of the Cottonwood Mine plan. If compliance with the mine plan presently contemplates use by PacificCorp of such methods of operation, no plan modification to require room-and-pillar extraction at the 10th Right panel would be needed. If modification of the mine plan to cover contingencies such as occurred in this case is now considered necessary to protect the Federal resource, the plan of operations may be amended accordingly.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the notice of noncompliance is vacated.

Franklin D. Amess
Administrative Judge

I concur.

James L. Bymes
Chief Administrative Judge