United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-1040 **September Term, 2019**

FILED ON: JANUARY 14, 2020

CACTUS CANYON QUARRIES, INC.,
PETITIONER

v.

SECRETARY OF LABOR, ET AL.,
RESPONDENTS

On Petition for Review of a Decision of the
Federal Mine Safety & Health Review Commission

Before: ROGERS, SRINIVASAN and PILLARD, *Circuit Judges*.

J U D G M E N T

This petition for review was considered on the record and on the briefs of the parties. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. R. 34(j). The court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). It is

ORDERED AND ADJUDGED that the petition for review be **DENIED**.

Cactus Canyon Quarries, Inc., petitioned for review of an order by an administrative law judge ("ALJ") of the Federal Mine Safety and Health Review Commission ("Commission") imposing $200 in fines for two safety violations for defective brake lights and headlights on trucks operated in a mine it owns. The court reviews the ALJ's factual findings for substantial evidence, which requires it "to determine whether there is such relevant evidence as a reasonable mind might accept as adequate to support the judge's conclusion." *Mach Mining, LLC v. Sec'y of Labor*, 809 F.3d 1259, 1263 (D.C. Cir. 2016) (internal quotation omitted); *see also* 30 U.S.C. § 816(a)(1). The ALJ's legal conclusions are subject to de novo review. *Mach Mining, LLC*, 809 F.3d at 1263. Cactus Canyon advances three principal arguments, none of which warrants relief.

First, Cactus Canyon contends that the Commission's citations were unsupported because there was no evidence that the inoperable headlights and brake lights affected the safety of the drivers of the vehicles (as opposed to the safety of others in the mine) and unfair because there are no precedential orders that notified Cactus Canyon that these deficiencies could affect others'

safety. Pet'r Br. 15–18. Cactus Canyon takes issue with the disparity between the conclusions reached by the mine inspector and the ALJ: the inspector cited Cactus Canyon based on potential injury to the driver, while the ALJ upheld the citations based on potential injury to others as well. Cactus Canyon also alludes to a purported agreement to amend the phrasing of the citations and appears to contest the wording of the citations rather than their issuance. *See* Pet'r Br. 17.

The citations were issued for violations of 30 C.F.R. § 56.14100(b), which requires that "[d]efects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons." Cactus Canyon does not explain why it believes the Secretary was required to amend the citations to clarify whose safety was affected by the defects or its basis for suggesting that there was an agreement between the owner of the mine and the mine inspector to do so. The regulation itself contains only the words "affect safety"; it does not draw any distinction between operators, other employees, or anyone else. More fundamentally, Cactus Canyon does not explain how changing the wording of the citations would bring it any relief.

Cactus Canyon also contends that the Commission did not exercise proper oversight of or review over the ALJ's decision. Pet'r Br. 17–18. Review of an ALJ's order by the Commission is discretionary, however, not an entitlement. *See* 30 U.S.C. § 823(d)(2)(A). Judicial review of the ALJ's decision or the final Commission decision remains available in any event. *See id.* §§ 816(a)(1), 823(d)(1).

Thus, Cactus Canyon's first set of arguments does not provide any basis upon which to overturn the citations.

Second, Cactus Canyon contends that there was not substantial evidence that the missing headlights and brake lights affected safety because the ALJ's conclusion relied on an unsupported inference applied to a vague regulation. Pet'r Br. 18–23.

"[S]pecific regulations cannot begin to cover all of the infinite variety of conditions which employees must face, and that by requiring regulations to be too specific courts would be opening up large loopholes allowing conduct which should be regulated to escape regulation." *Freeman United Coal Mining Co. v. Fed. Mine Safety & Health Review Comm'n*, 108 F.3d 358, 362 (D.C. Cir. 1997) (internal quotations and alterations omitted). Here, acknowledging that the mine inspector relied on a "broadly written safety standard[]," the ALJ explained that Commission precedent required the Secretary to "provide fair notice of the requirements" of the standard. ALJ Order at 3 (citing *Sunbelt Rentals, Inc.*, 38 FMSHRC 1619, 1626 (2016)). Further, the ALJ explained that Commission precedent, including the principal case relied on by Cactus Canyon, *Ideal Cement Co.*, 12 FMSHRC 2409 (1990), required the application of an objective standard: "whether a reasonably prudent person familiar with the mining industry and the protective purposes of the standard would have recognized the specific prohibition or requirement of the standard." ALJ Order at 3 (quoting *Ideal Cement Co.*, 12 FMSHRC at 2416).

Cactus Canyon argues that its vehicles' lack of lights did not affect safety because it showed that it did not operate the mine in the dark or in inclement weather, that there was minimal traffic on the roadway, and that no collisions had ever occurred. Pet'r Br. 21–26. Thus, Cactus

Canyon contends that it was unreasonable for the ALJ to infer, based solely on the testimony of the mine inspector, that the missing lights affected safety. Pet'r Br. 26–33. But Cactus Canyon undercuts its own argument, conceding that: "[d]uring the two day inspection and conferences between [Cactus Canyon] (miners and management) and the Inspector and his Supervisor, *all agreed warning lights on trucks affected the safety of others* under rare circumstances." Pet'r Br. 11–12 (emphasis added). Cactus Canyon's apparent emphasis on "rare," however, does not render unfounded the Secretary's concern for the safety risk.

Contrary to Cactus Canyon's implication, the Secretary did not have the burden of proving that the missing lights had already created an unsafe condition, such as a collision or near miss. As the ALJ noted, the mine inspector testified that multiple vehicles operated simultaneously on the roads, that it was foggy the day of the inspection, and that it would be difficult to tell whether a vehicle was coming to a stop if it did not have functioning brake lights. ALJ Order at 6–9. This evidence would allow a reasonable mind to accept the ALJ's conclusion that missing lights on vehicles operating in a mine would "affect safety." And this common-sense conclusion is not novel: ALJs have previously affirmed citations for violating 30 C.F.R. § 56.14100(b) for operating vehicles with defective headlights and brake lights because, for example, "inoperable brake lights clearly affect the safety of the truck, as any vehicle traveling behind the large truck would not realize that it was coming to a stop and would easily hit the back of the truck." *Boart Longyear Co.*, 34 FMSHRC 2715, 2718–19 (2012); *see also Apex Quarry, LLC*, 36 FMSHRC 211, 221 (2014).

Cactus Canyon posits that the ALJ relied on the fact that lights were originally installed on the vehicles. Pet'r Br. 29–30. But what Cactus Canyon refers to as the "original equipment presumption" was not mentioned in the ALJ's order and does not appear to have factored into the decision. *See* ALJ Order at 6–8. Further, Cactus Canyon argues that an expert report established that the lights did not affect safety under normal working conditions. Pet'r Br. 30–31. But of the two exhibits referred to by Cactus Canyon, Exhibit L was not admitted into evidence, Hr'g Tr. 139, and Exhibit M was a pre-trial submission authored by the mine owner acting as an expert witness, Hr'g Tr. 134. A reasonable mind could accept the ALJ's decision to credit the mine inspector's common-sense conclusions over the mine owner's self-interested opinion.

In addition, Cactus Canyon asserts that the Order is contrary to a "Stipulation," Pet'r Br. 18, 34, which appears to be a reference to the mine owner's direct examination of himself, during which he and counsel for the Secretary stipulated that Cactus Canyon had not been cited for missing headlights or taillights since at least 1982, Hr'g Tr. 139–40. According to Cactus Canyon, because previous inspectors had presumably observed but never cited it for lights that had long been inoperative, this inspector was not allowed to issue a citation. Blue Br. 34–35. But the Secretary "cannot be estopped from enforcing its regulations simply because it did not previously cite the mine operator." *Mainline Rock & Ballast, Inc. v. Sec'y of Labor*, 693 F.3d 1181, 1187 (10th Cir. 2012).

The Secretary interpreted Cactus Canyon's second point as a fair notice challenge. Resp't Br. 16–18. Cactus Canyon is adamant that it "never raised" a fair notice defense and thus the court will not construe its second contention to do so. *See* Pet'r Br. 33.

The court concludes that the citations were supported by substantial evidence, such as the mine inspector's testimony that lights would prevent the creation of a hazard to persons because functional lights would make it easier to see if the trucks were slowing down or approaching, especially in inclement weather like the foggy conditions that existed during the inspection. *See* ALJ Order at 5–9.

Third, Cactus Canyon contends that the ALJ erred by relying on ALJ decisions, which are not binding on the Commission and therefore should not be binding on Cactus Canyon, and that the bulk of those cases involved the safety of people other than the driver. Pet'r Br. 37–40.

ALJ decisions are not "precedent binding upon the Commission." 29 C.F.R. § 2700.69(d). But an ALJ is not prohibited from citing or relying on prior ALJ decisions. More fundamentally, the standard for notice is not subjective knowledge, but whether a "reasonably prudent person, familiar with the conditions the regulations are meant to address and the objectives the regulations are meant to achieve, would have fair warning of what the regulations require." *Freeman United Coal Mining Co.*, 108 F.3d at 362. A reasonably prudent mine operator would have fair warning that the absence of functional brake lights and headlights affects safety. Thus, this argument does not provide a basis for relief.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk