

10. A charge which has missed fire shall not be withdrawn, but shall be blasted, and in case the missed hole has been blasted at the end of a shift, that fact shall be reported by the foreman or shift boss to the mine captain or shift boss in charge of the next relay of miners before work is commenced in them.

31. The manager or captain or other competent officer of every mine shall examine at least once every day, all working shafts, levels, stopes, tunnels, drifts, crosscuts, raises, signal apparatus, pulleys and timbering in order to ascertain that they are in a safe and efficient working condition . . .

There was no shift boss employed on the mine at the time of the accident, and no foreman in charge of or having oversight over the workmen, and no inspection for the purpose mentioned in rule 31 was made by any one after the report to Grierson that the holes had broken badly, although he was, as I have said, in the mine and near the place in which the holes had been drilled.

The jury were, I think, warranted in coming to the conclusion that Grierson was negligent in not having made an examination of the mine after it had been reported to him that the holes had broken badly and that it would again be necessary to "shoot" some of them, and in leaving the respondent to be guided by his own judgment as to which of them he should "shoot," and which of them he need not "shoot," instead of himself directing on the ground what was to be done.

Grierson is, I think, condemned by his own testimony from which I make the following extracts:—

Q. Don't you think that a careful boss with an inexperienced man would probably go down and see the result of the first shot? A. Yes, if he was not busy with something else?

Q. Wouldn't it be his duty to see to such matters? A. To a certain extent.

Q. And you told him to go down and shoot the eleven holes or as many as you have to? A. Yes.

Q. They were to use their judgment? A. Yes.

Q. And if they did not find any of these should be shot, then it was not your (*sic*) duty to shoot under your instructions. You left it to their judgment? A. Yes.