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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. BARB 78-495-P
(A/O No. 02502-02021)

v.

No. 18 Mine

SHAMROCK COAL COMPANY,
RESPONDENT

DECISION

Appearances: John H. O'Donnell, Attorney, Office of the Solicitor,
Department of Labor, for Petitioner;
Neville Smith, Attorney, Manchester, Kentucky, for
Respondent.

Before: Judge Littlefield

Introduction

This is a proceeding for assessment of civil penalties against the Respondent and is governed by section 110(a) of the Federal Mine Safety and Health Act of 1977 (1977 Act), P.L. 95-164 (November 9, 1977), and section 109(a)(1) of the Federal Coal Mine Health and Safety Act of 1969 (1969 Act), P.L. 91-173 (December 30, 1969). Section 110(a) provides as follows:

The operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, shall be assessed a civil penalty by the Secretary which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense.

Section 109(a)(1) provides as follows:

The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, except the provisions of title 4, shall be assessed a civil penalty by the Secretary

under paragraph (3) of this subsection which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense. In determining the amount of the penalty, the Secretary shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good rapid compliance after notification of a violation.

Petition

On June 23, 1978, the Mine Safety and Health Administration (MSHA), (FOOTNOTE 1) through its attorney, filed a petition for assessment of civil penalties charging five alleged violations of the Act.

Answer

On July 21, 1978, Respondent filed a detailed response to the allegations and requested a hearing thereon.

Tribunal

A hearing was held in Knoxville, Tennessee, on February 14, 1979. Both MSHA and Shamrock Coal Company were represented by counsel (Tr. 4-5).

Evidence

The Judge held a prehearing conference before bringing the hearing to order and heard preliminary discussions bearing on the issues on the part of counsel for both parties.

The Judge, after hearing all evidence, studying the record, reviewing the exhibits, giving sympathetic regard to mitigating circumstances, and fully considering the criteria shown in section 109(a)(1) of the Act, made findings of fact, conclusions of law and issued an ORDER on the record, rendering his decision from the bench. Five violations were found as originally charged.

Findings of Fact and Conclusions of Law

The findings of fact, conclusions of law, and ORDER made on the record from the bench are hereby incorporated herein by reference and are AFFIRMED (Tr. 21-24).

Civil Penalties Assessed

Notice No.	Date	Section 30 CFR	Penalty
6-0029	04/27/76	75.1710	\$ 50
6-0083	08/03/76	77.216(c)	55
6-0085	08/03/76	77.215(h)	45
7-0029	02/15/77	75.1713-5	50
7-0134	08/24/77	75.316	50
Total			\$250

Disposition

The Judge was notified by letter from the Office of the Solicitor, U.S. Department of Labor, that the Respondent had submitted payment of \$250, as ordered for the five violations found by the Judge in his BENCH decision. WHEREFORE the above-captioned is CLOSED.

Malcolm P. Littlefield
Administrative Law Judge

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FOOTNOTES START HERE

~FOOTNOTE ONE

1. Successor-in-interest to the Mining Enforcement and Safety Administration (MSHA).