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MSHA V. PEGGS RUN COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 18, 1979

SECRETARY OF LABOR, Docket Nos. PITT 76X207-P
MINE SAFETY AND HEALTH PITT 76X219-P
ADMINISTRATION (MSHA)

v.

PEGGS RUN COAL CO., INC. Appeal No. IBMA 77-38

DECISION

This appeal from an administrative law judge's decision was pending before the Interior Department Board of Mine Operations Appeals as of March 8, 1978. Accordingly, it is before the Commission for disposition. Section 301 of the Federal Mine Safety and Health Amendments Act of 1977, 30 U.S.C. § 961 (1978); 29 CFR § 2700.57, as amended, 43 Fed. Reg. 46531 (October 10, 1978).

Peggs Run Coal Co., Inc. (Peggs Run) appeals from a decision of Administrative Law Judge Paul Merlin assessing civil penalties totaling \$830 for 12 violations of the Federal Coal Mine Health and Safety Act of 1969. 1/ That the underlying violations occurred is not disputed. Rather, on appeal Peggs Run urges that the judge's penalty assessments are "entirely inappropriate to the financial condition" of the company. As the basis for this assertion Peggs Run refers the Commission to a financial statement entered into evidence on its behalf demonstrating, in Peggs Run's view, that it is "in a hopeless financial condition."

1/ 30 U.S.C. §801 et seq. (1976)(amended 1977)(hereafter ("the Act")).

In determining the penalties to be assessed, Judge Merlin considered the financial statement submitted by Peggs Run. He found that the financial information constituted "a mitigating factor" to be taken into account in the assessment of appropriate penalties and he assessed a total penalty \$289 less than the amount sought in the petition for penalty assessment. 2/

Having reviewed the record and the briefs submitted by the parties, the Commission concludes that Peggs Run has not demonstrated any reason why the decision of the judge should not be affirmed. We note that, as part of the financial statement submitted to the judge, Peggs Run's tax return for the tax year ending March 31, 1975, reflected total officers' compensation of \$106,739.50, and for the tax year ending March 31, 1976, for the same three officers, total compensation of \$150,000.00. Total assets for the fiscal year ending March 31, 1976, were \$3,173,827 with gross sales of \$4,786,777. Accrued liabilities (royalties) to two of the officers exceeded \$200,000 as of December 31, 1976. The violations in question spanned the period between January 5, 1976, and March 10, 1976.

2/ Section 109 of the Act, in relevant part, provides:

"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 side 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 faith of the operator charged in attempting to achieve rapid compliance after notification of a violation (Emphasis added).

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In view of the foregoing, it does not appear that a penalty assessment of \$830 will have any significant ". . . effect on the operator's ability to continue in business." We conclude that the penalties assessed by the judge for the violations are reasonable and in accordance with the statutory criteria specified in § 109 of the Act.

Accordingly, the decision of the administrative law judge is affirmed.

fn. 2/ cont'd.

The parties submitted stipulations regarding the five criteria other than the "effect on the operator's ability to continue in business."