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MSHA V. COALTRAIN
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
November 30, 1979

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

v. Docket No. MORG 79-26-P

COALTRAIN CORPORATION

DECISION

On November 22, 1978, the Secretary of Labor filed a petition for assessment of civil penalty against Coaltrain Corporation seeking penalties totaling \$625 for seven alleged violations of the Federal Mine Safety and Health Act of 1977, 30 U.S.C.A. §801 et seq. (1978). On December 11, the president of Coaltrain, a strip mine operator with five employees, answered pro se, denying the alleged violations and requesting a hearing. On May 1, 1979, the administrative law judge issued a notice of hearing and pretrial order which set forth extensive pre-hearing requirements. Initial responses to the pretrial order were timely filed on May 25 by Coaltrain and the Secretary. In its response, Coaltrain set forth its version of the facts and circumstances concerning each alleged violation, as requested by the pretrial order, and again requested a hearing. On June 15, the Secretary timely responded to the second portion of the pretrial order, listing his intended hearing witnesses and exhibits. Coaltrain did not respond to the second portion of the order. On June 20 the judge sua sponte entered a default decision against Coaltrain for failing to "fully respond to the pretrial order ... or to show cause why such failure should be excused." 1/ The judge ordered Coaltrain to pay a penalty of \$625. On July 20, we directed review sua sponte.

We reverse. The record contains no indication that this small,

pro se operator was not acting in good faith in attempting to comply with the pretrial requirements by setting forth its position on each of the

1/ The judge did not conduct a show cause proceeding, pursuant to interim procedural rule 26 prior to entering the default. Rather, he apparently acted upon a statement in the pretrial order that "except for good cause shown in advance thereof, any failure to comply in full and on time with the provisions of this order shall be deemed cause for the issuance of an order of dismissal or default."

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seven alleged violations in this relatively uncomplicated penalty case. In the circumstances of this case, we find that Coaltrain substantially complied with the pretrial order and that the judge erred in defaulting the operator. 2/

Accordingly, the judge's decision is reversed and the case is remanded for further proceedings.

Marian Pearlman

Nease, Commissioner

2/ The Secretary, who did not move before the judge to default the operator, took essentially this position in his brief to the Commission on review.