

CCASE:
SOL (MSHA) V. PEERLESS EAGLE COAL
DDATE:
19790515
TTEXT:

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. HOPE 79-145-P
A.C. No. 46-01616-03003

v.

#2A Mine

PEERLESS EAGLE COAL COMPANY,
RESPONDENT

DECISION ON MOTION TO REMAND TO ASSESSMENT OFFICE

On January 8, 1979, Respondent filed its answer to the petition for assessment of a civil penalty. Therein, Respondent moved to remand the above-captioned to the Office of Assessments.

As grounds therefore, Respondent avers that the Office of Assessments, on behalf of the Secretary of Labor, computed its proposed assessment under regulations which were not in force at the time the citations were issued by the inspector.

The case was received by the Judge on April 19, 1979. No response has been received on behalf of the Secretary.

The Respondent has demonstrated no jurisdictional base which would allow the judge to remand the issue to the Secretary. The judge has a de novo responsibility to assess civil penalties under the Act. See subsections 110(a) and (i).

Furthermore, there exists a decisional prohibition against such remand. *Clinchfield Coal Company*, 3 IBMA 154, 159 (1974); see section 301(c)(2).

I have previously held that this judge is without the authority to order a remand to the Secretary of Labor. *Decision on Motion to Remand; Deskins Branch Coal Company, PIKE 78-329-P et seq.* (August 16, 1978) (attached).

~400

WHEREFORE the motion is DENIED.

Malcolm P. Littlefield
Judge