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

PEABODY COAL COMPANY,
APPLICANT

Application for Review

Docket No. VINC 78-386

v.

Citation No. 274635
May 18, 1978

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

Sunnyhill No. 9 South Underground
Mine

DECISION

This case was remanded to me from the Commission on May 2, 1979. After reviewing the file I issued, on May 9, 1979, a notice to the parties, wherein each was required to attempt to stipulate the facts but if a stipulation could not be reached, to submit within 30 days, its contentions as to the facts and its argument concerning them.

Peabody Coal Company filed a timely statement of facts and argument, but MSHA has not responded. I will therefore accept the facts as they appear in the statement filed by the Applicant and as corroborated by the material previously filed in the case.

On October 17, 1977, an "accident" occurred at Applicant's mine. It was not the type of accident which the regulations in effect at that time required the operator to report to MSHA. 30 CFR 80.1(g) excludes injuries "requiring only first-aid treatment." The regulation which Applicant is accused of violating, 30 CFR 50.20 did not become effective until December 30, 1977, and the event which occurred 2 months earlier would have been reportable if it occurred after the effective date of 30 CFR 50-20. MSHA's issuance of the citation on May 18, 1978, was clearly an attempt to give ex post facto treatment to the new regulation and was for that reason invalid.

The citation is vacated and the case is dismissed.

Charles C. Moore, Jr.
Administrative Law Judge