

CCASE:  
SOL (MSHA) V. LAWSON COAL CO.  
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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 Nos. Assessment Control Nos.
v.	PIKE 78-404-P 15-10173-02007 V PIKE 79-34-P 15-10173-03001
LAWSON COAL COMPANY, INC., RESPONDENT	No. 32 Mine

DEFAULT DECISION

Appearances: Edward H. Fitch IV, Esq., Office of the Solicitor,  
Department of Labor, for Petitioner  
No one appeared at the hearing on behalf of Respondent

Before : Administrative Law Judge Steffey

When the hearing in the above-entitled proceeding was convened in Pikeville, Kentucky, on July 26, 1979, pursuant to a written notice of hearing dated June 14, 1979, and received by respondent on June 18, 1979, counsel for the Mine Safety and Health Administration entered his appearance, but no one appeared at the hearing to represent respondent. The Commission's Interim Procedural Rules which were then in effect provided (29 CFR 2700.26(c)):

(c) Where the respondent fails to appear at a hearing, the Judge shall have the authority to conclude that the respondent has waived its right to a hearing and contest of the proposed penalties and may find the respondent in default. Where the Judge determines to hold respondent in default, the Judge shall enter a summary order imposing the proposed penalties as final, and directing that such penalties be paid.

Counsel for petitioner moved at the hearing that respondent be held in default pursuant to Section 2700.26(c) and that the penalties proposed by the Assessment Office be imposed. Counsel for petitioner also stated that he had just finished discussing the Assessment Office's proposed penalties with the inspectors who wrote the notices of violation and order involved and that the inspectors believed the penalties had appropriately been determined to be in an upper range of magnitude since the order involved in Docket No. PIKE 78-404-P had been issued under the unwarrantable-failure provisions of the Federal Coal Mine Health and Safety Act of 1969. Petitioner's counsel stated that the six violations

alleged by MSHA's Petition for Assessment of Civil Penalty filed in Docket No. PIKE 79-34-P were significant and warranted the relatively large penalties which had been proposed by the Assessment Office in that docket.

Petitioner's motion that respondent be found in default is granted and I find respondent to be in default. I conclude that respondent has waived its right to a hearing and that the penalties proposed by the Assessment Office should be imposed as hereinafter ordered. I note that some of the defenses set forth in respondent's reply to the show-cause order issued in this proceeding on April 5, 1979, might have been sufficient to justify some reduction in the penalties which were proposed by the Assessment Office, but in a default proceeding, it would be improper for me to take into consideration allegations made in respondent's reply to the show-cause order, particularly since Section 2700.26(c) specifically provides that when a judge determines to hold a respondent in default, "\* \* \* the Judge shall enter a summary order imposing the proposed penalties as final, and directing that such penalties be paid" (Emphasis supplied). In short, respondent cannot have its evidence considered without availing itself of the opportunity of sending a representative to the hearing.

WHEREFORE, it is ordered:

Lawson Coal Company shall, within 30 days from the date of this decision, pay penalties totaling \$2,951.00 which are allocated to the respective violations as follows:

Docket No. PIKE 78-404-P

Order No. 2 RHH (7-2) 3/3/77	75.402 .....	\$ 1,250.00
Total Penalties in Docket No. PIKE 78-404-P ....		\$ 1,250.00

Docket No. PIKE 79-34-P

Notice No. 2 FIJ (7-49) 6/16/77	75.313 .....	\$ 370.00
Notice No. 7 FIJ (7-54) 6/16/77	77.1701 .....	106.00
Notice No. 1 FIJ (7-57) 6/21/77	75.313 .....	370.00
Notice No. 2 FIJ (7-58) 6/21/77	75.512 .....	275.00
Notice No. 1 FIJ (7-60) 6/23/77	75.1710 .....	305.00
Notice No. 1 FIJ (7-61) 6/27/77	77.400 .....	275.00
Total Penalties in Docket No. PIKE 79-34-P .....		\$ 1,701.00
Total Penalties in This Proceeding .....		\$ 2,951.00

Richard C. Steffey  
Administrative Law Judge