

CCASE:
SOL (MSHA) V. U.S. STEEL CORP.
DDATE:
19830115
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
PETITIONER

Civil Penalty Proceeding

v.

Docket No. WEVA 79-304
AC No. 46-01417-03014V

UNITED STATES STEEL CORP.,
GARY DISTRICT,
RESPONDENT

No. 14, No. 3 Seam Portal

DECISION GRANTING MOTION TO DISMISS

On November 22, 1978, Petitioner issued Order No. 253998 to Respondent, under section 104(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. section 801 et seq., citing a violation of 30 CFR 75.200, a mandatory safety standard. Respondent filed an application for review of the order. A hearing on the merits was held and on September 19, 1979, a decision was issued by Judge Stewart in United States Steel Corporation, Docket No. HOPE 79-152 (September 19, 1979). In vacating the order of withdrawal, he found that "Applicant did not violate its roof control plan or section 75.200 as alleged in Order No. 253998."

On September 4, 1979, Petitioner filed a petition for assessment of civil penalties for the roof control violation as alleged in Order No. 253998. Respondent filed an answer denying the violation and moved to dismiss the petition based on the decision of Judge Stewart in HOPE 79-152.

I find that Judge Stewart's decision in HOPE 79-152 is res adjudicata as to the issue of a violation in this proceeding.

WHEREFORE IT IS ORDERED that the Respondent's motion to dismiss is GRANTED and the petition for assessment of civil penalties is DISMISSED.

WILLIAM FAUVER, JUDGE