

CCASE:
SOL (MSHA) V. PONTIKI COAL
DDATE:
19800211
TTEXT:

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

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

Civil Penalty Proceeding
Docket No. PIKE 78-420-P
A. C. No. 15-08413-02012V
Pontiki No. 1 Mine

v.

PONTIKI COAL CORPORATION,
RESPONDENT

DECISION

This matter is before me for reassessment of penalties for violations involved in three withdrawal orders after reassignment of judges pursuant to remand by the Commission's decision of October 25, 1979. The Administrative Law Judge who originally heard and decided this matter has since retired. He found the violations occurred as alleged. However, for failure of the Secretary's proof, he vacated the three section 104(c)(2) orders in question and mitigated penalties for the reason that the orders had been vacated.

In its reversal and remand, the Commission specifies only that the reassessment be made without consideration of the vacated orders as a mitigating factor.(FOOTNOTE 1) I therefore adopt the original judge's findings with respect to the six statutory criteria and incorporate such findings by reference.(FOOTNOTE 2) Although the original judge indicated that the penalties were being "mitigated due to the fact that the orders involved (were) vacated" the extent to which such reduction was carried was not described or shown. In these circumstances, my assessments will be de novo, that is, an independent evaluation of proper penalties--based, however, on the penalty assessment factors found by the original judge.

It should be further noted that (a) while this Respondent was a very large coal operator in 1977, it was not one of the giants of the industry

~369

(Tr. 7-9), or affiliated with one of the giant coal-producing groups, (FOOTNOTE 3) and (b) no injuries or fatalities were involved in any of the violations. (FOOTNOTE 4)

Respondent is assessed the following penalties:

Order No.	Date	Section	Penalty
1 TE	12/05/77	30 CFR 75.316	\$ 250
1 MM	12/05/77	30 CFR 75.316	1,250
2 FDG	12/06/77	30 CFR 75.200	4,500
			\$6,000

ORDER

IT IS ORDERED that Respondent pay to the Secretary of Labor the sum of \$6,000 within 30 days from the date of this decision.

Michael A. Lasher, Jr.
Judge

~FOOTNOTE 1

The Judge's finding that the violations occurred as charged by MSHA, and his findings with respect to the statutory criteria were not disturbed.

~FOOTNOTE 2

These findings are summarized in his written decision of February 9, 1979, at page 20, Finding Nos. 3 through 8, and are incorporated herein by reference.

~FOOTNOTE 3

See (Keystone Coal Industry Manual, (McGraw-Hill, 1977), pages 546, 756, and 757, indicating that in 1977 Pontiki was in Class 4 of a 10-class spectrum with annual coal production under 1 million tons, that the largest group with which it was then affiliated was in Class 1 (the largest class) with annual production of 3 million tons or more, and that such group was not one of the top 15 coal-producing groups in 1976.

~FOOTNOTE 4

Respondent's appeal to the United States Court of Appeals, D.C. Circuit, was voluntarily withdrawn and dismissed on January 30, 1980.