

CCASE:
SOL (MSHA) V. DUVAL
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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. WEST 79-194-M

v.

ASSESSMENT CONTROL NO. 02-00852-05005-F

DUVAL CORPORATION,

RESPONDENT

MINE: SIERRITA MILL

DECISION

APPEARANCES: Mildred L. Wheeler, Esq., Office of Daniel W. Teehan, Regional Solicitor, Office of the Solicitor, U. S. Department of Labor, 11071 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, California 94102 for Petitioner Walter D. Ellis, Esq., Houston, Texas, and Michael A. Lacagnina, Esq., Tucson, Arizona, for Respondent

Before: Judge John J. Morris

STATEMENT OF THE CASE

Petitioner seeks to assess a penalty against a mine operator for the activities of a contractor. These proceedings arise under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq., (amended 1977).

ISSUE

The single issue here centers on whether a mine operator is liable under the Act for the activities of an independent contractor.(FOOTNOTE 1)

FINDINGS OF FACT

From the uncontroverted evidence, I find the following facts.

1. Cimetta Engineering and Construction Company installed, under contract, a pipeline for Duval Corporation, a mine operator (Tr 9).

2. The installation did not involve Duval employees nor any mining activities (Tr 27).

3. Four Cimetta employees maneuvered pipe under three overhead power transmission lines (P1, R2).

4. While holding a steel choker, a Cimetta employee was electrocuted when contact was made with the power line by the Cimetta crane (BP-1).

CONTENTIONS

Duval argues that a finding of a violation of 30 CFR 55.12-71 (FOOTNOTE 2) imposes absolute liability without fault; that such a result violates the Act, Congressional intent, and basic fairness. Further, Duval asserts the dissenting opinion of Commissioner Backley in Old Ben Coal Company (FOOTNOTE 3) is more logical than the majority opinion and Duval argues the dissenting opinion should be followed.

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Finally, Duval contends Judges should achieve justice. In short, a Judge should not be bound by considerations of administrative convenience which Duval argues forms the basic rationale for the Commission decision in Old Ben Coal Company.

CONCLUSIONS OF LAW

The concept urged by Duval would result in the undersigned overturning a controlling Review Commission decision. I lack such authority. A failure to follow precedent could only result in adjudicatory chaos with as much different applicable law as there are individual Judges.

It is clear that an administrative law judge must follow the rules and precedent of the Commission, Secretary of Labor, Ray A. Jones vs. James Oliver et al NORT 78-415, March 1979.

On the authority of Old Ben Coal Company and other Commission cases, (FOOTNOTE 4) I affirm the citation.

Based on the foregoing findings of fact and conclusions of law, I enter the following:

ORDER

Citation 376894 and the proposed penalty of \$5,000 are affirmed.

John J. Morris
Administrative Law Judge

~FOOTNOTE 1

There is a paucity of evidence as to the exact relationship between the mine operator and the contractor.

~FOOTNOTE 2

The cited regulation provides as follows:
55.12-71 Mandatory. When equipment must be moved or operated near energized high-voltage powerlines (other than trolley lines) and the clearance is less than 10 feet, the lines shall be deenergized or other precautionary measures shall be taken.

~FOOTNOTE 3

Secretary of Labor, Mine Safety and Health Administration (MSHA) v. Old Ben Coal Company VINC 79-119.

~FOOTNOTE 4

Republic Steel Corporation IBMA 76-28, April, 1979; Kaiser Steel Corporation DENV 77-13-P (May 1979); Monterey Coal Company HOPE 78-469 (November 1979).