

CCASE:
SOL (MSHA) V. JONES & LAUGHLIN STEEL
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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. PENN 79-145
A.O. No. 36-00962-03030V

v.

Vesta No. 5

JONES & LAUGHLIN STEEL CORP.,
RESPONDENT

DECISION AND ORDER

As a result of the failure to train properly the miner assigned to the duty of fan watcher as required by the operator's fan stoppage plan the operator failed to detect a fan stoppage on the Hastings Fan at the Vesta No. 5 Mine that occurred around midnight on April 9, 1979. Because the miner responsible for turning off the other fans, deenergizing the power, and signalling the men to leave the mine misread the fan signals a serious violation of 30 CFR 75.321 occurred. Since the inspector determined the violation involved a condition which the operator knew or should have known about a section 104(d)(1) citation issued and a penalty was originally proposed in the amount of \$2000.00. After conference the penalty was reduced to \$1250.00.

The parties now move to reduce the penalty to \$850.00 on the ground that a violation attributable to a rank-and-file miner is not within the operator's control, and must therefore be treated as an unwarrantable no-fault violation. This I find is a contradiction in terms. On the one hand, counsel for the Secretary has refused to vacate the unwarrantable failure charge because "the Operator should have known of the condition." On the other hand she suggests the \$1150.00 reduction is justified because "this violation was not within control of the Operator and negligence was minimal." Because I conclude that the knowledge and actions or inactions of the miner responsible for fan watching are fully imputable to the operator, I find the proposed reduction is unjustified and the amount assessed after conference was proper.

Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, DENIED. It is FURTHER ORDERED that the operator pay

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a penalty of \$1250.00 as settlement in full of this violation on or before Friday, March 28, 1980 and that subject to payment the captioned petition be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge