CCASE:

SOL (MSHA) V. KESSLER COALS

DDATE: 19800506 TTEXT: Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,

Civil Penalty Proceeding

MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),

Docket No. WEVA 80-38

PETITIONER

A/O No. 46-04774-03010

v.

Kessler No. 3 Mine

KESSLER COALS, INC.,

RESPONDENT

DECISION

Appearances:

Barbara K. Kaufmann, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Petitioner C. Lynch Christian III, Esq., Jackson, Kelly, Holt & O'Farrell, Charleston, West Virginia,

for Respondent

Before:

Judge Stewart

The above-captioned case is a civil penalty proceeding brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), hereinafter referred to as the Act.

On November 26, 1979, Petitioner filed with the Mine Safety and Health Review Commission a petition for assessment of civil penalty in this case. Respondent filed its answer to the petition on December 26, 1979. The hearing in these matters was commenced on April 15, 1980, in Charleston, West Virginia.

Citation No. 0637464 issued by the Federal mine inspector on April 11, 1979, citing a violation of 30 C.F.R. 75.509 stated that "Work was being performed on the continuous miner on 2 Right section (001-2) while the continuous miner was energized."

At the hearing, Petitioner stated on the record that there was insufficient proof that the continuous miner was energized and moved that the citation be vacated. The motion was granted and the citation was vacated from the bench.

ORDER

The vacation of the citation is affirmed. The proceeding is dismissed.

Forrest E. Stewart Administrative Law Judge