

CCASE:
SOL (MSHA) V. CALL & RAMSEY COAL
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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. KENT 79-281
A.O. No. 15-10445-03013 H

v.

Bevins Branch Prep. Plant

CALL & RAMSEY COAL CO., INC.,
RESPONDENT

DECISION AND ORDER

The parties move for approval of a settlement of a violation by an independent contractor of the prohibition against operating a mobile crane within 10 feet of an energized overhead power line, 30 CFR 77.807-2. The violation was the subject of an imminent danger closure order issued December 4, 1978 and terminated January 23, 1979.

As noted, the operator, Call and Ramsey Coal Company, did not commit the violation charged. The violation was committed by W. D. Robertson and Co., an independent contractor, who furnishes mobile cranes to dip slurry ponds.

The difficulty is that the order does not allege a violation of the standard in that it is not charged that at the time the order was written the crane was being operated within 10 feet of an energized power line. The only charge is that the crane, which at the time was parked and idled, was "in close proximity to energized power lines." The inspector admitted that at no time did he measure the distance from the boom to the nearest power line. On the other hand, the operator's chief engineer measured the distance and reported there was no way the crane boom could contact the wire.

The premises considered, I find the charge and the proof offered in its support legally insufficient to establish the violation charged.(FOOTNOTE 1)

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Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, DENIED. It is FURTHER ORDERED that the captioned proposal for penalty be, and hereby is, DISMISSED.

Joseph B. Kennedy
Administrative Law Judge

~FOOTNOTE 1

In accordance with my understanding of section 110(k) of the Act, factual assertions in this Decision and Order are based on an independent evaluation and de novo review of the information submitted in support of the parties' motion to approve settlement. Should the disposition proposed be unacceptable the parties may request a settlement conference or evidentiary hearing to offer additional facts in support of the settlement proposed.