

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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28 JUL 1980

SECRETARY OF LABOR, : Civil Penalty Proceeding  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEVA 80-323  
Petitioner : A.C. No. 46-00889-03012R  
v. :  
 : Juanita No. 1 Mine  
COAL RESOURCES, INC., :  
Respondent :

DECISION APPROVING SETTLEMENT

Appearances: Edward H. Fitch, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner;  
S. J. Angotti, Esq., Morgantown, West Virginia, for Respondent.

Before: Judge Melick

This case is before me upon a petition for assessment of civil penalty under section 110(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801 et seq., the "Act"). On June 10, 1980, at a hearing held in Morgantown, West Virginia, Petitioner proposed a settlement agreement conditioned on the payment by Coal Resources, Inc., of a penalty of \$6,000. I have considered the evidence and stipulations submitted and conclude that the proposal is appropriate when considering the criteria set forth in section 110(1) of the Act.

The citation at bar charges a serious violation of section 103(a) of the Act in that an MSHA inspector was forcibly denied entry to conduct an authorized inspection. On September 11, 1979, Inspector Albert Rorda arrived at the operator's Juanita No. 1 Mine in Everettsville, West Virginia, to conduct a regular inspection but before he could do so he was threatened, physically attacked and seriously injured by John Laurita a representative and official of the operator.

At hearing, the statement of Inspector Rorda was submitted as undisputed evidence. The operator waived its right to require the inspector to testify under oath and waived its right to cross-examination. The statement reads as follows: 1/

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1/ Transcript at 7.

I was assigned to a regular inspection at the Juanita No. 1 Mine, Coal Resources, Inc., Everettville, Monongalia County, West Virginia, MSHA ID. No. 46-00889, by Steve Kuretzka. I left Fairmont Field Office at 7:10 a.m. and drove to the mine. I arrived at the mine at 7:45 a.m.. I saw a **highlift** operator putting coal in a coal truck. Everything looked normal. I proceeded to the mine office and was met by Pat Rundle. I told him I was there to start a regular inspection of the mine. He mentioned an OSM -- that's Office of Surface Mining -- man was there the day before. Pat Rundle, Mine Operator, said that an OSM man said they needed more gravel on the roadways, drainage was coming out of the mine, **they could** be fined \$25,000, and all the agencies of the government is [sic] killing them. I proceeded to the office and bathhouse **with** my clothes and equipment, sat [sic] them on the bench and was getting ready to change **clothes**. The phone rang and Pat answered it. He talked approximately one minute. Pat said that John Laurita wanted to talk to me. He told me I had fined him \$750, you **fucking** son-of-a-bitch. He told me not to go underground until he got there. He mentioned a trailing cable fine again \$750. I told him I don't set fines; they have **an assessment** office for that. He said, you son-of-a-bitch I'll be right over. I told Pat Rundle we weren't the only cause of all these problems; Reclamation and OSM have been there too. Pat said the Government **is** running the coal business trying to do away with the small operators. We would be better off if this country was Communist. This conversation was the general tone until John got there. John Laurita arrived at the mine in a four-wheel jeep truck, blue and white. He parked on the other side of the tracks across from the mine office. He was walking across toward me. I was sitting on a bench outside. He asked me what I was looking at, you son-of-a-bitch. I told him I looked at anything that moved it attracted my attention. He said I ought to kill you, you son-of-a-bitch for fining me that \$750 for that cable. He said I don't even want you on my property. He said **I** hope I never see you on this property again; **I** don't care if you never come back. John motioned for me to go in the building. He closed the door behind **us**. He said something about a woman in Morgantown in the funeral home, his sister-in-law who had five kids. Then he said I ought to split your head wide open with an ax. I bent over to pick up my clothes from the bench. John Laurita pushed me and I lost my balance and fell on the floor. After falling he grabbed my shirt and tore two buttons and tore my T-shirt and placed scratches on my face and chest. I reached out to stop him with my left **arm**. He continued to keep me on the floor. John Laurita told Pat Rundle to find him an ax. Pat Rundle was trying to break it up and get **John** Laurita away from me. Pat Rundle more or less forced him away from me

allowing me to get **up**. John Laurita followed me and he went to the left and I went to the right **toward my** government car. **I** drove toward his jeep to leave. He was blocking the roadway and since I couldn't get through I turned left and crossed over the mainline track with my government car on to the other roadway that allows supplies to be brought in on that side. As **I** proceeded away from the mine John Laurita was standing on the same roadway I was leaving on. As **I was** leaving the mine site John Laurita picked up part of a fish-plate and acted as if he was going to throw it toward the car. He hesitated and did not throw it. I left the mine and returned to the Fainmont Field Office.

Dr. Shen **K.** Wang, M.D., of the orthopedic clinic in Fairmont, West Virginia, examined Inspector Borda later the same day. According to Doctor Wang, Borda suffered four fractured ribs as well as multiple abrasions on the left side of the face, chin, and chest. 2/

Based on this undisputed evidence it is clear that the attack upon Inspector Borda was not the result of mere negligence but was intentional and malicious and therefore represents the highest degree of culpability. Serious injuries were not only probable but were intended and did in fact result from the incident. The penalty of **\$6,000** here ordered against Coal Resources is a severe but appropriate sanction.

I have also noted in accepting this penalty in settlement that the operator produces about 100 tons of coal a day, has a moderate history of violations (and no violations of a similar nature) and has not denied entry to or threatened MSHA inspectors since this incident. I do observe however that **MSHA** now sends inspectors to the Coal Resources facility in pairs raising some question as to whether all parties are convinced that abatement is permanent.

WHEREFORE, the motion for approval of settlement is GRANTED, and it is ORDERED that Respondent pay the **agreed penalty within 30 days of this** order.

  
Gary Melick  
Administrative Law Judge

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2/ Transcript at 10.