

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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AUG 27 1980

SECRETARY OF LABOR, : Civil Penalty Proceeding
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PIKE 77-89-P
Petitioner : A.O. No. 15-09717-2001
v. :
: No. 1A Mine
B. B. & W. COAL COMPANY, :
Respondent :

DECISION

Appearances: Michael **Bolden**, Esq., Trial Attorney, Office of the
Solicitor, U.S. Department of Labor, Arlington, Virginia,
for Petitioner;

Before: Judge Fauver

On July 31, 1980, an amended notice of hearing was issued in the subject proceeding, scheduling the hearing for August 8, 1980, in Pikeville, Kentucky. The hearing site was changed from Abingdon, Virginia, to Pikeville at the request of Respondent. Counsel for the Government and his witnesses appeared for the hearing at 9:30 a.m., August 8, 1980, at the scheduled time and place for the hearing. No one appeared for the Respondent.

The Respondent failed to appear at the time and place designated in the amended notice of hearing and is hereby held in default. Each notice of violation and related documents, including the inspector's report, were verified by the Secretary's witnesses under oath and received in evidence. Respondent is deemed to have waived his rights to a hearing and the allegations in the notices of violation and related exhibits are deemed to be true and incorporated herein as Findings of **Fact:**

1. The undersigned Judge has jurisdiction over the parties and subject matter of this proceeding.

2. At all pertinent times, Respondent operated an underground coal mine, known as the No. 1A Mine and located in Pike County, Kentucky, which produced bituminous coal for sales in or substantially affecting interstate commerce. Respondent regularly employed one surface and six underground employees, working one shift per day and producing about 150 tons of coal per day.

3. As to each of the violations included below, Respondent is found to have been negligent in causing or allowing the violation, and each violation is found to have involved the gravity stated in the inspector's report, in evidence herein.

CONCLUSIONS OF LAW

4. Respondent violated 30 C.F.R. § 75.400 on August 31, 1976, by allowing oil, grease, and coal dust to accumulate around electrical components on the frame of the scoop. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

5. Respondent violated 30 C.F.R. § 75.503 on August 31, 1976, by failing to maintain the battery-powered scoops in permissible condition. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

6. Respondent violated 30 C.F.R. § 75.316 on August 31, 1976, by failing to erect seals in the No. 1 entry in violation of the ventilation system methane and dust-control plan. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

7. Respondent violated 30 C.F.R. § 75.1715 on August 31, 1976, by failing to provide two underground employees with identification checks fastened securely to their lamp belts. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$50 for this violation.

8. Respondent violated 30 C.F.R. § 75.329-1 on September 9, 1976, by failing to seal or ventilate an abandoned area. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

9. Respondent violated 30 C.F.R. § 75.1600 on October 18, 1976, by failing to provide a communication system for the working section. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$50 for this violation.

10. Respondent violated 30 C.F.R. § 75.516 on October 18, 1976, by failing to provide insulation on a telephone wire. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$50 for this violation.

11. Respondent violated 30 C.F.R. § 75.400 on October 18, 1976, by allowing loose coal and coal dust to accumulate throughout the entire mine. Based upon the statutory criteria for assessing a civil penalty for a

violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

12. Respondent violated 30 **C.F.R. §** 75.302 on October 18, 1976, by failing to erect a line brattice in the No. 2 entry where coal was being drilled. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$200 for this violation.

13. Respondent violated 30 C.F.R. **§** 75.400 on October 18, 1976, by allowing coal, coal dust, grease and oil to accumulate on the roof bolter, Serial No. 2161. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

14. Respondent violated 30 C.F.R. **§** 75.200 on October 18, 1976, by violating the approved roof-control plan. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a civil penalty of \$100 for this violation.

15. Respondent violated 30 C.F.R. **§** 75.316 on October 18, 1976, by failing to provide drop curtains across the Nos. 2 and 3 entries and at the belt tailpiece in violation of the approved ventilation system methane and dust-control plan. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

16. Respondent violated 30 **C.F.R. §** 75.1718 on October 18, 1976, by failing to provide a supply of potable drinking water and cups in the working section. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$20 for this violation.

17. Respondent violated 30 C.F.R. **§** 75.1722 on October 18, 1976, by failing to provide a guard at the **inby** end of the mine fan. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

18. Respondent violated 30 C.F.R. **§** 77.401 on October 18, 1976, by failing to provide the bit-grinding machine with an adjustable tool rest. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$70 for this violation.

19. Respondent violated 30 **C.F.R. §** 75.1306 on October 18, 1976, by allowing a plastic bag of blasting caps within 10 inches of the roof-drill cable. Based upon the statutory criteria for assessing a civil penalty for a **v**iolation of a mandatory safety standard, Respondent **is** assessed a penalty of \$100 for this violation.

20. Respondent violated 30 C.F.R. § 75.1103 on October 18, 1976, by failing to provide an automatic fire-warning device on the No. 1 belt. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$70 for this violation.

21. Respondent violated 30 C.F.R. § 75.604 on October 18, 1976, by failing to provide moisture-proof seals to the five permanent splices on the trailing cable to the Acme roof drill. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

22. Respondent violated 30 C.F.R. § 75.400 on October 18, 1976, by allowing oil, coal, and coal dust to accumulate on the scoop. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

23. Respondent violated 30 C.F.R. § 75.400 on October 18, 1976, by allowing coal, coal dust and grease to accumulate in numerous places on the battery-powered scoop. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$100 for this violation.

ORDER

WHEREFORE IT IS ORDERED that **B. B. & W.** Coal Company shall pay the Secretary of Labor the above-assessed civil penalties, in the total amount of \$1,810 within 30 days from the date of this decision.

William Fauver

WILLIAM FAUVER, JUDGE

Distribution:

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