

CCASE:

SOL (MSHA) V. POCAHONTAS FUEL & PATSY TRUCKING

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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. VA 80-55
A.O. No. 44-02841-1004

v.

Pocahontas Prep. Plant

POCAHONTAS FUEL CO.,
RESPONDENT

PATSY TRUCKING CO.,
THIRD-PARTY
RESPONDENT

DECISION AND ORDER

This case involves charges that an independent contractor was responsible for operating three coal trucks at the site of the operator's Pocahontas Preparation Plant without fire extinguishers and, in the case of one truck, without an operative back-up alarm. The violations occurred in June 1975 and thereafter became entailed in the long standing dispute over the liability of independent contractors for violations of the Mine Safety Law. In this case, the gordian knot was cut with a simple motion to implead.(FOOTNOTE 1) See, Secretary v. Morton Salt Division and Frontier-Kemper Contractors, CENT 80-59-M 2 FMSHRC _____, (August 8, 1980).

The penalties initially proposed were \$106 for the missing fire extinguishers and \$94 for the inoperative back-up alarm. Based on an independent evaluation and de novo review of the circumstances,

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the trial judge advised the parties he would approve a settlement in the amount of \$300. One hundred dollars was to be allocated to the fire extinguishers and \$200 to the back-up alarm violation. When the independent contractor agreed, the Secretary moved for approval and dismissal.

The premises considered, it is ORDERED that the motion to approve settlement as to the independent contractor and dismissal as to the operator be, and hereby is, GRANTED. It is FURTHER ORDERED that the independent contractor having paid the settlement agreed upon, \$300, the captioned matter be, and hereby is, DISMISSED.

Joseph B. Kennedy
Administrative Law Judge

~FOOTNOTE_ONE

1 Impleading the independent contractor mooted the operator's motion to dismiss for failure of the Secretary to file a timely proposal for penalty. Rule 27(a). In Arch Mineral and Mulzer Crushed Stone the judges, in the absence of a showing of prejudice, denied similar motions. See, Secretary v. Mulzer Crushed Stone Company, LAKE 80-255-M, (September 25, 1980). An interlocutory appeal from the judge's decision in Arch Mineral was denied by the Commission without resolving the issue. Arch Mineral Corporation, WEST 79-58, 2 FMSHRC 277 (Feb. 1980).