

CCASE:

SOL (MSHA) V. N.A. DAGERSTROM

DDATE:

19801017

TTEXT:

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. WEST 80-363-M
A.O. No. 45-02684-05002

v.

QS-C-109 Mine

N. A. DAGERSTROM, INC.,
RESPONDENT

DECISION AND ORDER

Pursuant to Rule 11, the Secretary moves for an order vacating the citation which underlies the charge of violation of the mandatory safety standard cited. The motion is predicated on the fact that the solicitor's pretrial investigation of the charge conclusively demonstrates that no violation, in fact, occurred.

Based on an independent evaluation and de novo review of the circumstances, I conclude the evidence is insufficient to support the charge upon which the proposal for penalty rests.

Accordingly, it is ORDERED that the motion to withdraw the proposal for penalty, vacate the citation, and dismiss this matter be, and hereby is, GRANTED and the captioned matter be, and hereby is, DISMISSED WITH PREJUDICE. Climax Molybdenum Company, 2 FMSHRC _____ (October 7, 1980).

Joseph B. Kennedy
Administrative Law Judge