

CCASE:
SOL (MSHA) v. METTIKI COAL
DDATE:
19810304
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. YORK 80-125
A/O No. 18-00652-03024V

v.

Gobblers Knob Mine

METTIKI COAL CORPORATION,
RESPONDENT

DECISION

Appearances: Covette Rooney, Esq., Office of the Solicitor, U.S. Department of Labor, Room 14480-Gateway Bldg., 3535 Market Street, Philadelphia, Pennsylvania, for Petitioner, MSHA; Ralph M. Burnett, Esq., Burnett, Eiswert & Crawford, P.A., 500 Thayer Center, Oakland, Maryland, for Respondent, Mettiki Coal Corporation

Before: Judge Merlin

The above-captioned case was heard as scheduled on February 3, 1981. At the conclusion of the inspector's testimony the Solicitor moved to withdraw her petition for the assessment of a civil penalty for the alleged violation of 30 CFR 75.200. As is set forth in the administrative transcript the Solicitor's motion was well taken. Based upon the inspector's testimony the government failed to make a prima facie showing that a violation existed. Indeed, any determination of the factual circumstances involved could only have been based upon speculation and surmise. Accordingly, the Solicitor's motion was granted from the bench.

Upon receipt of the administrative transcript this matter was again reviewed and the determination from the bench is hereby AFFIRMED.

The Solicitor's motion to withdraw the petition is hereby GRANTED and this matter is hereby DISMISSED.

Paul Merlin
Assistant Chief Administrative Law Judge