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SOL (MSHA) v. RALPH FOSTER  
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Federal Mine Safty and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

RALPH FOSTER AND SONS,  
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 79-397-M

A/C NO. 05-03209-05001

MINE: ERDA C G27

DECISION AFTER REMAND

On May 12, 1981, the Federal Mine Safety and Health Review Commission remanded the above case for the assessment of a penalty.

The following is a review of the criteria required to be examined in the assessment of a penalty. 30 U.S.C. 820(i). The parties stipulated to the fact that at the time Citation No. 326566 was issued, Ralph Foster and Sons had no history of violations of the Federal Mine Safety and Health Act, 30 U.S.C. 801 et seq. (the Act) (Tr. 22). Respondent is a very small mine operator. (Exhibit A attached to the petition and Tr. 11).

The danger anticipated by the standard was likely to occur (Tr. 11, Commission Exhibit 1), and the resulting injury could be permanently disabling. (Comm. Ex. 1). The miners involved immediately put on their safety glasses after being informed of the violation by the inspector. (Tr. 12).

The degree of negligence attributed to respondent by the Mine Safety and Health Administration was based on an erroneous fact and should, therefore, be re-assessed. The inspector's statement indicates that the proprietor of the mine, Robert Foster, knew of the condition cited. This conclusion was based on the inspector's belief that Robert Foster was one of the miners who was not wearing the safety glasses. (Comm. Exhibit 1). However, at trial, the inspector testified that Robert Foster was not one of the miners involved, and in fact, was not in the mine at the time. (Tr. 10, 11, 21). Mr. Foster confirmed the fact that at the time of the violation he was working in another mine (Tr. 29). I find, therefore, that there was no negligence on the part of the mine operator involved in the violation of the Act.

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Having given due consideration to the necessary criteria, I assess a penalty of \$15.00. Respondent is directed pay this amount within 30 days of the date of this order.

John J. Morris  
Administrative Law Judge