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(UMWA) v. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

UNITED MINE WORKERS OF
AMERICA (UMWA),
CONTESTANT

v.

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

CONTEST OF ORDER

Docket No. CENT 81-223-R

Order No. 1024387;
5/13/81

Charleston No. 1 Mine

ORDER OF DISMISSAL

On May 13, 1981, a Federal inspector issued a combined citation and imminent danger withdrawal order to Garland Coal Company. (FOOTNOTE.1) Contestant claims that the citation should be modified to contain a finding that the violation alleged by the inspector constituted an "unwarrantable failure" to comply with the cited standard. (FOOTNOTE.2) The Secretary of Labor contends that under the Act, findings of imminent danger and unwarrantable failure are mutually exclusive. Without passing on the issue raised by the Secretary, I conclude that Contestant does not have the right under the Act to challenge the citation.

~FOOTNOTE_FOUR

The U.S. District Court for the District of Columbia recently declined to decide whether 105(d) prevents miners and representatives of miners from contesting citations, preferring to have the Commission resolve the issue. Council of the Southern Mountains v. Donovan, No. 79-2982 (D.D.C. 1981), 2 BNA MSHC 1329, 1332, n. 8.

~FOOTNOTE_FIVE

Miners and representatives of miners may participate as parties to Commission proceedings if the mine operator elects to challenge a citation, or a civil penalty based on it. 29 C.F.R. 2700.