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

CHESTER M. JENKINS,  
CONTESTANT

v.

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

Contest of Citation

Docket No. WEST 81-348-RM

Citation No. 354435

Republic Unit Mine

DECISION AND ORDER OF DISMISSAL

On July 15, 1981, Mr. Chester M. Jenkins, a miner employed at Day Mines, Inc., filed a notice of contest under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," (FOOTNOTE.1) seeking to contest the issuance to Day Mines, Inc., the mine operator, of Citation No. 354435, a citation issued under section 104(a) of the Act. The operator itself has not filed a notice of contest within the 30 days required by section 105(d) of the Act. On September 1, 1981, the Secretary filed a motion to dismiss the miner's contest on the grounds that the miner is "barred from challenging" the subject citation under section 105(d).

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Under section 105(d), an operator may challenge the issuance or modification of citations and certain orders, the notification of a proposed assessment of penalty, and the reasonableness of the time set for abatement. Under the plain language of that section, the miner and representative of miners are given authority to challenge only the issuance, modification or termination of certain orders and the reasonableness of time set for abatement. Where the language of a statute is plain and admits of no more than one meaning, there is no need for interpretation and no need to resort to the rules of construction. *Caminetti v. U.S.*, 242 U.S. 470 at 485, 61 L.Ed 442, 37 S. Ct. 192 (1916). Accordingly, I find that there is no authority under the provisions of section 105(d) of the Act for a miner to contest the issuance of a section 104(a) citation.(FOOTNOTE.2)

The Secretary's motion to dismiss is therefore GRANTED and it is ORDERED that the captioned proceeding be DISMISSED.(FOOTNOTE.3)

Gary Melick  
Administrative Law Judge

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~FOOTNOTE ONE

Section 105(d) of the Act provides:

"If, within 30 days of receipt thereof, an operator of a coal or other mine notifies the Secretary that he intends to contest the issuance or modification of an order issued under section 104, or citation or a notification of proposed assessment of a penalty issued under subsection (a) or (b) of this section, or the reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 104, or any miner or representative of miners notifies the Secretary of an intention to contest the issuance, modification, or termination of any order issued under section 104, or the reasonableness of the length of time set for abatement by a citation or modification thereof issued under section 104, \* \* \* the Commission shall afford an opportunity for a hearing \* \* \*." (Emphasis added.)

~FOOTNOTE TWO

See *United Mine Workers of America v. Secretary of Labor*, CENT 81-223-R (August 28, 1981); *Council of the Southern Mountains v. Donovan*, No. 99-2982 (D.D.C. 1981), 2 BNA MSHC 1329, 1322, n. 8.

~FOOTNOTE THREE

If the operator should later contest the proposed assessment, the miner in question may nevertheless participate as a party to the civil penalty proceeding. 29 C.F.R. 2700.4.