

CCASE:
CONSOLIDATION COAL V. SOL (MSHA)
DDATE:
19820208
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY,
CONTESTANT

v.

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

Contest of Citation

Docket No. WEVA 81-222-R
Citation No. 805557; 12/30/80

Blacksville No. 2 Mine

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

v.

CONSOLIDATION COAL COMPANY,
RESPONDENT

Civil Penalty Proceeding

Docket No. WEVA 81-361
A/O No. 46-01968-03076

Blacksville No. 2 Mine

DECISION AND ORDER

The captioned review-penalty proceeding is before me on reassignment from Judge Cook who held a consolidated hearing in McHenry, Maryland on July 28, 1981.

There is no genuine dispute as to any of the materia (FOOTNOTE 1) facts.1 The dispositive issue is whether as a matter of law 30 C.F.R. 70.201(d) (FOOTNOTE 2) mandates corrective action dust sampling on each production shift during the time fixed for abatement.

The operator contends that the referent of the demonstrative pronoun "then" is any time during the time fixed for abatement. Where, as in this case, the time fixed for abatement was some 32 days, the operator's interpretation would permit several production shifts to be run without sampling prior to the time fixed for abatement.

Counsel for MSHA claims the proper interpretation is the "very first production shift" following the accomplishment of corrective adjustments to the operator's dust control system. The operator concedes it did not begin sampling until the second production shift after corrective action was taken.

Both interpretations are at variance with the statutory directive that underlies the improved standard. The standard issued in April 1980 is a paraphrase of section 104(f) of the Mine Safety Law, which is identical with old section 104(i) of the Coal Act, 30 U.S.C. | 814(f). (FOOTNOTE 3) The statute provides that after a notice of violation of the respirable dust standard issues "fixing a reasonable time for abatement of the violation," the operator "[d]uring such time," shall "cause samples . . . to be taken of the affected area during each production shift." Under the plain and unambiguous language of the statute it is clear that "during the time fixed for abatement," here the 32 days, the operator was obligated to take dust samples "during each production shift" and not just on the production shifts that came after corrective action was taken.

Since it would do violence to the Congressional intent and to established canons of construction of remedial legislation to construe the improved standard more narrowly than the statute, I find the phrase "and then" as used in the improved standard means "during the time fixed for abatement." (FOOTNOTE 4) For these reasons, I conclude the failure to sample on the first production shift after corrective action was taken was a violation of 30 C.F.R. 70.201(d).

Because the operator failed to sample during only one production shift after compliance was achieved the miners were not exposed to any

time, the operator of the mine shall cause samples described in section 202(a) to be taken of the affected area during each production shift"

~FOOTNOTE_FOUR

4 Under section 101(a)(9), 30 U.S.C. | 811(a)(9), no improved standard can reduce the protection afforded miners by a statutory standard.