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SOL (MSHA) V. OZARK LEAD
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

v.

OZARK LEAD COMPANY,
RESPONDENT

Civil Penalty Proceeding

Docket No: CENT 80-380-M
A.O. No: 23-00458-05013

Frank R. Milliken Mine

DECISION

This case was first submitted on Motions for summary judgement to Judge Laurenson. Judge Laurenson denied the motions but stayed the proceedings pending a Commission decision in Homestake Mining Company, Docket CENT 79-27-M, et. seq. The Commission has now decided Homestake Mining Company 4 FMSHRC 146 (February 16, 1982), and the decision was adverse to the government's position in this case. Secretary vs. Climax Molybdenum Company, 4 FMSHRC 159 (February 16, 1982) was also decided adversely to the government's position as was Secretary vs. Local 5024, United Steel Workers and White Pine Copper Division, Copper Range Company, 4 FMSHRC 155 (February 16, 1982).

The only remaining issue is whether a violation can be established by the fact that the inspector observed vehicle tire tracks under loose roof. The parties have stipulated that there is no evidence as to when the tire tracks were made or as to when the roof became loose and unconsolidated. The evidence contained in the stipulation amounts to at most the proposition that a vehicle may have been driven under loose roof. That is not enough to sustain the government's burden of proof in a penalty case.

The citations are vacated and the case is DISMISSED.

Charles C. Moore, Jr.
Administrative Law Judge