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SOL (MSHA) V. HELVETIA COAL
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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.

HELVETIA COAL COMPANY,
RESPONDENT

Civil Penalty Proceeding

Docket No. PENN 82-42
A/O No. 36-00917-03117

Lucerne No. 6 Mine

DECISION AND ORDER

This matter came on for a confrontational hearing in Falls Church, Virginia on April 1, 1982. The sole issue presented was whether a two-inch cut in a trailing cable that exposed the undamaged insulated power wires in an abrasion repair to the cable actually existed. The parties stipulated that if the violation did occur it was a nonserious, nofault violation that created no immediate foreseeable shock hazard absent damage to the dielectric strength of the insulation on the power wires. The gravamen of the violation was that the claimed two-inch cut deprived the cable of the full protection mandated by 30 C.F.R. 75.517.

After the parties and trial judge had a full opportunity to examine the three eyewitnesses the parties elected to waive the filing of post-hearing briefs and to submit the matter for a jury verdict decision.

Whereupon, the trial judge found that, without attempting to resolve in detail all of the conflicts in the testimony, the preponderance of the reliable, probative and substantial evidence showed it more probable than not that the violation charged did not, in fact, occur.

The premises considered, therefore it is ORDERED that the bench decision be, and hereby is, CONFIRMED and the penalty case DISMISSED.

Joseph B. Kennedy
Administrative Law Judge