

CCASE:  
SOUTHERN COAL V. SOL (MSHA)  
DDATE:  
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TTEXT:

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

SOUTHERN OHIO COAL COMPANY,  
CONTESTANT

v.

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

Contest of Order and Citation

Docket No. LAKE 82-78-R  
Order/Citation No. 1120758 4/14/82

Meigs No. 2 Mine

DECISION

Statement of the Case

By joint motion filed July 19, 1982, the parties seek my approval of a proposed "settltment" of this case, and contestant moves to withdraw its contest challenging the captioned section 107(a) imminent danger order. In support of the proposed "settlement", the parties assert that they have discussed the six statutory criteria found in section 110 of the Act, and the motion contains arguments concerning such matters as negligence, gravity, good faith compliance, size of business, and the contestant's history of prior violations. The motion also contains a full discussion concerning the cited conditions, including an assertion by MSHA that it now proposes to modify the order to a section 104(a) citation because of certain circumstances and actions taken by the operator as discussed in the motion.

Discussion

This case concerns a contest filed by Southern Ohio Coal Company on May 14, 1982, challenging the legality and propriety of a section 107(a) imminent danger order served on Southern Ohio on April 14, 1982. The case was docketed for hearing in Columbus, Ohio, July 22, 1982. However, the hearing was cancelled and continued after MSHA's counsel advised me that the parties proposed to settle the matter. The aforesaid settlement motion was then filed urging my approval of MSHA's proposal to modify the order from a section 107(a) imminent danger order to a section 104(a) citation.

As far as I know no civil penalty case has been filed by MSHA seeking a civil penalty assessment for the citation in question. Under the circumstances, I have no jurisdiction to approve any prospective settlement concerning any civil penalty proposal which may be filed by

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MSHA in this matter, and the normal civil penalty matters set out in section 110(i) of the Act are not in issue in these proceedings.

With regard to MSHA's proposed modification of the order in question, the justification given for this proposal appears to be reasonable and proper and I see no reason why it should not be done. However, I believe this is a matter best left to the discretion of MSHA as the enforcing arm of the Secretary. In this regard, I assume that MSHA will modify the order to reflect that it is a section 104(a) citation and that Southern Ohio will then pay any assessment levied for that citation. I also assume that Southern Ohio's motion to withdraw its contest is conditioned on the modification of the order and that once this is done, Southern Ohio has no further interest in challenging the violation.

ORDER

In view of the foregoing, contestant's motion to withdraw its contest IS GRANTED, and this case is DISMISSED. Although the proposed disposition and modification of the order in question by MSHA appears to be proper and reasonable, I decline to specifically approve it as a "settlement" of any civil penalty dispute. However, should MSHA renege on its proposed modification of the order in question, Southern Ohio is free to file an appropriate motion with me for further relief.

George A. Koutras  
Administrative Law Judge