

CCASE:
SOL (MSHA) V. DOAN COAL
DDATE:
19820819
TTEXT:

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

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

Civil Penalty Proceeding

Docket No. PENN 82-31
A.O. No. 36-02695-03011

v.

Doan Strip Mine

DOAN COAL COMPANY,
RESPONDENT

DECISION

Appearances: Robert Cohen, Attorney, U.S. Department of Labor,
Arlington, Virginia, for the petitioner Robert M. Hanak,
Esquire, Reynoldsville, Pennsylvania, for the respondent

Before: Judge Koutras

Statement of the Case

This proceeding was docketed for hearing in Pittsburgh, Pennsylvania, July 1, 1982, and the case was called after the completion of the hearings in MSHA v. Doan Coal Company, and Austin Powder Company, Dockets PENN 82-33 and PENN 82-63. The parties proposed a settlement disposing of the two citations in issue and they were afforded an opportunity to present arguments in support of their joint proposal. The citations in question are as follows:

Citation No.	Date	30 CFR Section	Assessment	Settlement
1041336	8/27/81	77.410	\$ 26	\$ 20
1041337	8/31/81	77.410	26	20

Discussion

Both citations concern the lack of operable reverse warning devices on an endloader and bulldozer working in the mine pit area. Petitioner asserted that both citations were nonserious in that the citations did not result in any lost time injuries or accidents. One person may have been exposed to a hazard, but any injury was improbable. The bulldozer was operating in an isolated and remote area of the mine.

~1571

Petitioner asserted that the respondent took immediate action to repair the back-up alarms in question and exercised good faith abatement in this regard. The equipment was also immediately shut down when the conditions were cited.

Petitioner stated that the respondent should have been aware of the fact that the alarms were inoperable when the equipment in question was operated in reverse, and that its failure in this regard constitutes ordinary negligence.

With regard to the questions concerning the size of business and history of prior violations, the parties agreed that the evidence adduced in the prior case, PENN 82-33, regarding these issues are also applicable in this case. That evidence reflects that respondent is a small strip mine operator, with a total employment of approximately 40 individuals, and an annual production of approximately 150,000 tons. Respondent's history of prior citations reflects 40 paid assessments for citations issued during the period 1970 to 1981.

Findings and Conclusions

Respondent admits to the violations cited in the two citations issued in this case. Accordingly, they are AFFIRMED. In addition, I find that the citations were nonserious, that they resulted from ordinary negligence, and that the conditions cited were abated in good faith. I also conclude that respondent has a good safety record and that its history of prior violations is not such as to warrant any increase in the penalties assessed in this case.

Respondent stipulated that the penalties assessed for the citations in question will not adversely affect its ability to continue in business (Tr. 5), and I adopt this as my finding on this issue.

ORDER

In view of the foregoing discussion, findings and conclusions, I find that the settlement proposed by the parties in this case is reasonable and in the public interest. Accordingly, pursuant to 29 CFR 2700.30, it is APPROVED, and the respondent IS ORDERED to pay the civil penalties in the settlement amounts shown above within thirty (30) days of the date of this decision. Upon receipt of payment by the petitioner, this case is DISMISSED.

George A. Koutras
Administrative Law Judge