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SOL (MSHA) V. EMERY MINING
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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

Civil Penalty Proceeding

Docket No: WEST 82-48
A.O. No: 42-00121-03103

v.

Docket No: WEST 82-80
A.O. No: 42-00121-03106 H

EMERY MINING CORPORATION,
RESPONDENT

Deer Creek Mine

AND

EMERY MINING CORPORATION,
APPLICANT

CONTEST PROCEEDINGS

Docket No: WEST 81-400-R
Order No: 1022357 9/9/81

v.

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

Deer Creek Mine

DECISION ON REMAND

Appearances: James H. Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado, for
Petitioner Evert W. Winder, Manager, Health and
Safety, Emery Mining Corporation, Huntington,
Utah, Todd D. Peterson, Esq., Attorney for
Respondent

Before: Judge Moore

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On August 11, 1983, the Commission remanded the above case to me for the purpose of assessing the appropriate civil penalty. The Commission has decided that the violations occurred, hence I have only the criteria to consider. The regulation in question states:

"each miner shall receive a minimum of 8 hours of annual refresher training as prescribed in this section."

The company and I interpreted the words "annual refresher training" as meaning once every calendar year. The government argues that the words mean "within 12 months", but in its appeal brief sort of "weazel" words it in such a way that it means every 13 months (see government exhibit 1 and page 9 of the government's main brief). The Commission interprets the words to mean "within 12 months of the last received training". */

The Commission's ruling necessitates the rescission of government exhibit 1, which is a MSHA policy memorandum No: 81-2ET. MSHA is accordingly ordered to rescind that policy memorandum.

I can not find that the respondent was negligent when I agree with respondent's interpretation of the regulation. The fact that the Commission disagreed does not mean that respondent was negligent. I therefore find no negligence.

There was no gravity proved and I therefore find none. Also, the fact that MSHA approved respondent's refresher training plan, militates against substantial penalties. A total penalty of \$100 is assessed for all violations involved.

Emery Mining Company is accordingly ORDERED to pay to MSHA within 30 days, a civil penalty in the total sum of \$100.

Charles C. Moore, Jr.
Administrative Law Judge

*/ The Commission's ruling will result in the continual advance of the retraining date. If a miner is trained on June 5 of one year then June 5 of the following year is not within the last 12 months. A miner must be retrained before June 5.