

CCASE:
EMERY MINING V. SOL (MSHA)
DDATE:
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

EMERY MINING CORPORATION,
CONTESTANT

v.

CONTEST PROCEEDING

Docket No. WEST 82-200-R
Order No. 2073785 8/13/82

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

Little Dove Mine

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

v.

CIVIL PENALTY PROCEEDING

Docket No. WEST 83-18
A.C. No. 42-01393-03504

Little Dove Mine

EMERY MINING CORPORATION,
RESPONDENT

DECISION AND ORDER

Before: Judge Broderick

On July 25, 1983, I issued an order consolidating the above proceedings. I also denied Emery's motion for summary decision and granted the cross motion of the Secretary for limited summary decision. I retained jurisdiction to determine whether the violation was significant and substantial, and to assess a civil penalty. I directed the parties to attempt to stipulate the facts necessary for me to make such determinations.

On August 29, 1983, the parties filed a stipulation of facts with a computer printout of Emery's history of previous violations.

Based on the stipulation of facts, I conclude that Respondent is a large operator (its annual production is approximately 4 million tons). Its history of previous violations is not such that a penalty otherwise appropriate should be increased because of it.

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The stipulation states that on August 12, 1982, during the 4:00 p.m. to 12:00 midnight shift coal was being produced and the crew unknowingly came within approximately 1 foot of breaking through to the abandoned workings of an adjacent mine. On the next shift, a maintenance shift, a breakthrough occurred either because of natural forces or as a result of the cleanup operations. The breakthrough was approximately 10 to 12 inches and it released a quantity of carbon dioxide gas into the working section. This was discovered on the preshift examination prior to the 8:00 a.m. shift on August 13, 1981. No miners were injured or killed as a result of the breakthrough.

I have previously concluded that the facts do not show that the violation was the result of Emery's unwarrantable failure or negligence. I further conclude that the evidence does not show that the violation was of such nature as could significantly and substantially contribute to the cause and effect of a coal mine safety or health hazard. I further conclude, however, that the violation was moderately serious, since it could have resulted (though it was unlikely to have resulted) in injuries to miners.

Based upon the above findings and conclusions, I conclude that an appropriate penalty for the violation is \$75.00.

ORDER

Therefore, IT IS ORDERED that Emery Mining Company within 30 days of the date of this decision pay the sum of \$75 as a civil penalty for the violation found in my order of July 25, 1983, and, subject to such payment, the civil penalty proceeding is DISMISSED.

IT IS FURTHER ORDERED that in the notice of contest proceeding, the citation is AFFIRMED and the proceeding is DISMISSED.

James A. Broderick
Administrative Law Judge