

CCASE:
SOL (MSHA) V. SHAMROCK COAL
DDATE:
19831024
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. KENT 83-207
A.C. No. 15-02502-03507

v.

No. 18 Mine

SHAMROCK COAL CO., INC.,
RESPONDENT

DENIAL OF OPERATOR'S REQUEST TO WITHDRAW

ORDER TO SOLICITOR TO SUBMIT
SETTLEMENT MOTION OR INFORMATION

On May 5, 1983, the Solicitor filed a penalty proposal in the above-captioned action. The operator failed to answer and on September 14, 1983, I issued a show cause order.

By letter dated September 22, 1983, the operator advises it wishes to withdraw its request for hearing enclosing a copy of a memorandum dated September 6, 1983, written by the MSHA District Manager, Barbourville, Kentucky to an MSHA official stating that this order should not have been specially assessed. The District Manager requests that this item be assessed under the regular formula.

After the penalty proposal was filed by the Solicitor, this Commission had exclusive jurisdiction under the Act. The only way a penalty now can be approved and assessed is by the Commission under section 110 of the Act. The District Manager had no authority to act as he did. The operator's motion to withdraw must therefore be Denied.

It appears that the most expeditious way to handle this matter would be for the Solicitor to discuss the matter with the operator in order to determine if the matter can be appropriately settled. If so, the Solicitor then should file a settlement motion. If the matter cannot be settled, the Solicitor should advise me so the case can be assigned and set down for hearing.

~1872

Accordingly, it is Ordered that the Solicitor advise me of the status of this case within 45 days of the date of this order.

Paul Merlin
Chief Administrative Law Judge