

CCASE:
SOL (MSHA) V. KENTUCKY COAL
DDATE:
19840323
TTEXT:

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

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

v.

KENTUCKY BLUE COAL COMPANY,
INC.,

RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 83-244
A.C. No. 15-11436-03502

Fariston Tipple

ORDER OF DISMISSAL

Before: Judge Steffey

The proposal for assessment of civil penalty filed in the above-entitled proceeding seeks to have a penalty assessed for a single violation of 30 C.F.R. 48.28 alleged in Citation No. 2005380 dated November 3, 1982. The condition or practice stated in the citation is that "[t]he employees at this tipple have not received the required 8 hrs. annual refresher training." When respondent failed to file a reply to the proposal for assessment of civil penalty, a show cause order was issued on January 11, 1984, requiring respondent to explain within 30 days why it had failed to file an answer to the proposal for assessment of civil penalty. Respondent promptly filed an answer on January 16, 1984, stating that respondent has always received a waiver for shower facilities and that respondent has had the use of bathroom facilities through the kindness of one of respondent's employees who lives not more than 25 feet from respondent's property. There is nothing in respondent's answer to the show-cause order to explain what a waiver as to providing shower facilities or the use of a nearby bathroom has to do with the sole violation at issue in this proceeding, namely, respondent's alleged failure to provide 8 hours of annual refresher training.

Section 2700.28 of the Commission's rules, 29 C.F.R. 2700.28, provides as follows:

A party against whom a penalty is sought shall file and serve an answer within 30 days after service of a copy of the proposal on the party. An answer shall include a short and plain statement of the reasons why each of the violations cited in the proposal is contested, including a statement as to whether a violation occurred and whether a hearing is requested.

~734

As I have explained in the first paragraph of this order, respondent's answer filed on January 16, 1984, failed to comply with section 2700.28 of the Commission's rules. Therefore, a second order to show cause was issued on January 25, 1984. The last paragraph of that order provided as follows:

Respondent shall, by February 28, 1984, file an answer to the proposal for assessment of civil penalty in Docket No. KENT 83-244 specifically explaining why a hearing is desired with respect to the violation of section 48.28 alleged in Citation No. 2005380 issued November 3, 1982. Failure of respondent to reply to this second show-cause order will result in my concluding that respondent no longer wants a hearing with respect to the alleged violation of section 48.28. I shall thereafter find respondent to be in default and respondent will be ordered to pay the full penalty of \$20.00 proposed by MSHA.

The return receipt in the official file shows that respondent received the second show-cause order on January 26, 1984, but I have received no reply to that order. Consequently, I find respondent in default for failure to file an answer to the show-cause order issued January 25, 1984. Section 2700.63(b) of the Commission's rules provides:

(b) Penalty proceedings. When the Judge finds the respondent in default in a civil penalty proceeding, the Judge shall also enter a summary order assessing the proposed penalties as final, and directing that such penalties be paid.

WHEREFORE, it is ordered:

Respondent, having been found in default, is ordered to pay a civil penalty of \$20.00 within 30 days from the date of this order for the single violation of section 48.28 alleged in Citation No. 2005380 dated November 3, 1982.

Richard C. Steffey
Administrative Law Judge