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SOL (MSHA) V. CROCKETT COAL
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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

v.

CROCKETT COAL COMPANY, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. VA 84-23
A.C. No. 44-05920-03520

No. 5A Mine

DEFAULT DECISION

Before: Judge Steffey

A show-cause order was issued on August 20, 1984, in the above-entitled proceeding requesting that respondent explain in writing by September 7, 1984, why its request for a hearing should not be considered as having been waived for its failure to comply with the Commission's rules and with the requests made in the prehearing order issued June 21, 1984. The return receipt in the official file shows that respondent received the show-cause order on August 24, 1984, but I have received no reply to the show-cause order.

Respondent's answer to the Secretary of Labor's petition for assessment of civil penalty was deficient because it failed to comply with section 2700.28, 29 C.F.R. 2700.28, of the Commission's rules by giving any "reasons why each of the violations cited" were being contested. The answer, however, stated that "[i]f you need any further information, please notify our office by mail or phone". In the prehearing order issued June 21, 1984, I explained in great detail the nature of the violations for which penalties were proposed by MSHA and pointed out that respondent's answer was deficient in failing to explain the reasons it was requesting a hearing. The prehearing order, nevertheless, requested respondent only to advise me as to the number of witnesses it expected to present, to give an estimate of the amount of time which it thought its evidence would take to present, and to list all facts as to which respondent was willing to stipulate.

Respondent's answer to the prehearing order, however, only repeated that it would attend a hearing in the Wise County Courthouse or the City of Norton's courtroom and asked to be advised of the location for the hearing.

It has been my experience in prior cases that when respondents represent themselves at hearings, they raise many issues which the Secretary's counsel cannot anticipate, such as arguments concerning the area which was being mined at a

given time. That type of dispute can be settled in most instances only by having the mine map produced which shows the dates on which mining had advanced to specific locations. I have had to recess hearings so that the Secretary's counsel could call additional witnesses or obtain maps or other information which the Secretary's counsel would not normally be expected to bring to a hearing room if the operator is only contesting the amount of the proposed penalties or some technicality in the wording of the inspectors' citations or orders.

The show-cause order issued in this proceeding on August 20, 1984, explained in detail why it is necessary for a respondent to explain its reasons for requesting a hearing, provide the judge and the Secretary's counsel with some indication of the amount of time which is likely to be required for the hearing, and indicate whether respondent is willing to stipulate or agree to any facts. Respondent's answer to the petition for assessment of civil penalty had stated that if "further information" was needed, it would be supplied. The show-cause order, in actuality, only requested respondent to supply the "further information" which it had offered to provide.

Respondent's refusal to reply in any way to the show-cause order leaves me with no choice but to conclude that respondent would prefer to waive its request for a hearing and pay the proposed penalties than to provide the small amount of information requested in the show-cause order. Consequently, I find respondent in default for failure to comply with the Commission's rules and my orders of June 21, 1984, and August 20, 1984. Section 2700.63(b) of the Commission's rules provides that "[w]hen 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, within 30 days from the date of this decision, to pay civil penalties totaling \$846.00 which are allocated to the respective alleged violations as follows:

Citation No. 2149676	8/2/83	75.1710	.....	\$ 160.00
Citation No. 2149677	8/2/83	75.1710	.....	160.00
Citation No. 2149678	8/2/83	75.1710	.....	160.00
Citation No. 2149679	8/2/83	75.1710	.....	160.00
Citation No. 9971203	2/14/84	70.100(a)	....	206.00

Total Penalties Proposed in the Petition
for Assessment of Civil Penalty Filed in Docket
No. VA 84-23\$ 846.00

Richard C. Steffey
Administrative Law Judge