

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

2 SKYLINE, 10th FLOOR

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FALLS CHURCH, VIRGINIA 22041

OCT 17 1984

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), :
Petitioner : Docket No. PENN 84-20
v. : A.C. No. 36-03425-03543
: Maple Creek No. 2 Mine
U.S. STEEL MINING CO., INC., :
Respondent :

DECISION

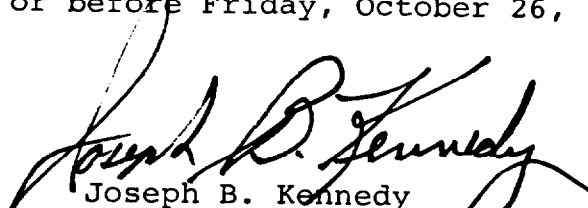
Appearances: Thomas A. Brown, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia,
Pennsylvania, for Petitioner;
Louise Q. Symons, Esq., U.S. Steel Mining Co.,
Inc., Pittsburgh, Pennsylvania, for Respondent.

Before: Judge Kennedy

On May 24, 1984, the trial judge entered a tentative bench decision vacating the S&S finding and rejecting MSHA's claim that the roof cited in the captioned citation was inadequately supported (Tr. 121-122). At the same time, the trial judge found that because the roof was not bolted to plan there was a technical violation of the approved roof control plan. A penalty of \$150 was assessed for the violation found.

In response to an order to show cause why the tentative decision should not be adopted as the final disposition in this matter, the operator moved to vacate the tentative decision. The ground assigned was that the roof control plan did not apply to the roof in the area cited and/or that the area cited was bolted before the effective date of the requirement for a roof control plan. After the matter came on for oral argument on MSHA's opposition to vacation of the bench decision, the parties agreed to settle the matter provided the trial judge would modify his decision so as to delete the finding of a technical violation of the roof control plan and substitute therefor a finding that the violation was a result of the operator's failure to control adequately the roof in the area cited. This in turn would be predicated on evidence which showed that because the operator initially chose to install bolts on four-foot centers the absence of such a bolting pattern established a failure to adequately control the roof in that area, a violation of the first sentence of 30 C.F.R. 75.200.

Accordingly, it is ORDERED that as so modified the bench decision be, and hereby is, CONFIRMED AND ADOPTED as the final decision in this matter. It is FURTHER ORDERED that the operator pay the amount of the penalty assessed and agreed upon, \$150, on or before Friday, October 26, 1984.


Joseph B. Kennedy
Administrative Law Judge

Distribution:

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