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SOL (MSHA) V. DEAN FUELS
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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

CIVIL PENALTY PROCEEDING

Docket No. WEVA 84-338
A.C. No. 46-06607-03506

v.

Dean No. 1 Mine

DEAN FUELS INC.,
RESPONDENT

DEFAULT DECISION

Before: Judge Steffey

A prehearing order was issued October 18, 1984, in the above-entitled proceeding requiring the parties to discuss settlement and to notify me by November 23, 1984, whether a settlement of the issues had been reached. The order also provided for the parties to furnish specified information by November 30, 1984, if they were unable to achieve settlement.

Counsel for the Secretary of Labor filed on November 13, 1984, a copy of a letter which she had mailed to respondent's representative. That letter stated that the Secretary's counsel had been unsuccessful in her efforts to talk to respondent's representative by telephone and asked that he either call her or write to her so that they could discuss the issues involved in this proceeding. On November 27, 1984, the Secretary's counsel filed a response to the prehearing order of October 18, 1984. That response explained that the Secretary's counsel could not provide the stipulations required by the prehearing order because she had been unable "to reach the respondent's representative, despite telephone calls and a letter to the representative."

Inasmuch as respondent's representative had failed to submit any reply whatsoever to the prehearing order, I issued on December 7, 1984, a show-cause order to respondent's representative pursuant to the Commission's rules, 29 C.F.R. 2700.63, which provide that when a party fails to comply with an order of a judge, "an order to show cause shall be directed to the party before the entry of any order of default or dismissal." The show-cause order specifically provided as follows:

Respondent, by January 7, 1985, shall show cause, that is, explain in writing, why it should not be held in default for failure to comply with the provisions of the prehearing order of October 18, 1984. Failure of respondent to give a

satisfactory answer to this order will result in a finding that respondent has waived its right to a hearing and that respondent should be found to be in default. If respondent is found to be in default, respondent will be ordered to pay the full penalties proposed by MSHA.

A return receipt in the official file shows that respondent received the show-cause order on December 10, 1984. Respondent filed on December 17, 1984, a reply to the show-cause order. The reply, in its entirety, states as follows:

I will be unable to get away to Washington D.C.--I had been hoping to get some of the violations reduced. Thank you for your time and attention.

Respondent has failed to give a satisfactory answer to the show-cause order. There was no mention in either the prehearing order or the show-cause order of any need for respondent's representative to travel to Washington, D.C. The petition for assessment of civil penalty filed by the Secretary in this proceeding seeks to have civil penalties assessed for four alleged violations of the mandatory health and safety standards. MSHA proposed a penalty of \$20 each for two of the alleged violations and a penalty of \$50 each for the two remaining violations. The prehearing order explained that it was unlikely that the proposed penalties of \$20 could be reduced unless respondent had evidence to prove that no violations had occurred. As to the proposed penalties of \$50, the prehearing order requested the parties to discuss settlement to determine whether respondent had any reasons to justify a reduction of those two penalties. The letter written to respondent's representative by the Secretary's counsel contained the following sentence:

If you would like the fines for the other penalties lowered, you should offer proof that the mine inspector incorrectly assessed the gravity or the negligence involved in the violation, or that payment of the fine will seriously affect your ability to remain in the coal mining business.

When respondent requested a hearing concerning the penalties proposed by the Secretary, it became a party to a proceeding before the Commission and, as such, respondent is obligated to comply with the Commission's procedural rules. Section 2700.54(b) of the Commission's rules lists procedures which a judge may follow for simplification of the issues, obtaining stipulations or admissions of fact, and settlement of some or all of the issues. Respondent's representative has

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ignored the requirements of the prehearing order issued October 18, 1984, and has refused to discuss settlement or stipulation of any facts with the Secretary's counsel despite her repeated efforts made in writing and by telephone. Finally, respondent's representative has provided no reasons whatsoever for his failure to reply to the prehearing order.

Respondent's refusal to comply with my prehearing order supports a finding that respondent has waived its right to a hearing and I find respondent in default for its failure to give a satisfactory answer in reply to the show-cause order issued December 7, 1984. Section 2700.63(b) provides that when a judge finds the respondent in default in a civil penalty proceeding, he "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 to be in default, shall, within 30 days from the date of this decision, pay civil penalties totaling \$140.00 for the violations alleged in this proceeding. The penalties are allocated to the respective violations as follows:

Citation No. 2411512	5/2/84	75.503	\$ 20.00
Citation No. 2411513	5/2/84	75.1722(a)	50.00
Citation No. 2411514	5/7/84	75.400	20.00
Citation No. 2411516	5/7/84	77.505	50.00

\$ Total Civil Penalties Proposed in This Proceeding \$140.00

Richard C. Steffey
Administrative Law Judge