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

ALBERT R. CROSS,  
CONTESTANT

CONTEST PROCEEDING

v.

Docket No. WEVA 84-145-R  
Citation No. 2260658; 1/18/84

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

Loveridge No. 22 Mine

ORDER OF DISMISSAL

Before: Judge Broderick

On March 15, 1984, Contestant, Chairman of the Mine Safety Committee at the subject mine filed a contest challenging the citation issued on January 18, 1984, and modified after a conference on February 17, 1984. The citation charged a violation of 30 C.F.R. 75.1403 because of a defective track switch. The citation was originally demoninated as significant and substantial. Following the conference, which, according to Contestant, was not attended by the Inspector who issued the citation or any UMWA representative, the significant and substantial designation was removed.

On December 17, 1984, the Secretary of Labor filed a motion to dismiss the proceeding and a memorandum in support of the motion. Contestant has not replied to the motion.

In the case of United Mine Workers of America v. Secretary of Labor, 5 FMSHRC 807 (1983), the Commission held that miners or their representatives do not have the statutory authority to initiate review of citations by a notice of contest. That case involved a combined imminent danger withdrawal order issued under section 107(a), and a citation issued under section 104(a) of the Act. The UMWA contended that the violation resulted from the mine operator's unwarrantable failure to comply with the standard in question, and sought to have the citation amended to include an unwarrantable failure finding. The Commission held that the statute did not grant the miners the right to initiate a contest proceeding, challenging a citation issued under section 104 of the Act. I believe the Commission decision is controlling here.

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Therefore, IT IS ORDERED that the motion is GRANTED, and this proceeding is DISMISSED.

James A. Broderick  
Administrative Law Judge