

CCASE:
SOL (MSHA) v. NEIBERT 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.

NEIBERT COAL COMPANY, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 84-279
A.C. No. 46-06547-03503

Docket No. WEVA 84-342
A.C. No. 46-06547-03505

No. 2 Mine

SUMMARY DECISIONS AND ORDERS

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern civil penalty proposals filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments for 16 alleged violations of certain mandatory safety and health standards found in Parts 70, 75, and 77, Title 30, Code of Federal Regulations.

These cases were scheduled for hearing in Logan, West Virginia, on February 26, 1985. The hearings were continued when the petitioner's counsel advised me that the parties would propose a settlement, and the parties were given until April 1, 1985, to file their settlement motion. As of this date, no settlement motion has been forthcoming.

By letter dated April 5, 1985, petitioner's counsel advised me that information he has received indicates that the respondent is no longer in operation and is insolvent. Counsel advised further that he was awaiting further confirmation of the financial status of the respondent, and that respondent's representative has advised him that the respondent will not actively defend or litigate these cases further.

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In view of the foregoing, I issued an order on April 23, 1985, directing the parties to show cause as to why the respondent should not be defaulted, because of its failure to forward certain information to the petitioner, so as to enable the petitioner to file its responsive settlement motion with me for adjudication.

Discussion

The respondent has failed to respond to the petitioner's request to furnish information concerning its financial condition, and has also failed to respond to my previous orders concerning the proposed disposition of these cases. Under the circumstances, I conclude and find that the respondent is in default, and that these proceedings may be disposed of pursuant to the Commission's summary disposition procedures found in 29 C.F.R. 2700.63.

ORDER

In view of the respondent's default, and pursuant to the provisions of 29 C.F.R. 2700.63(b), the respondent is assessed civil penalties for the violations in question, as follows:

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Citation No.	Date	30 C.F.R. Section	Assessment
2143006	5/3/84	77.400(a)	\$ 50.00
2143008	5/3/84	75.1103-1	\$ 54.00
2143009	5/3/84	77.701-2	\$ 50.00
2143010	5/4/84	77.200	\$ 63.00
2143011	5/4/84	75.1722(b)	\$ 68.00
2143012	5/4/84	75.400	\$ 63.00
2143013	5/4/84	75.1100-2(b)	\$ 74.00
2143014	5/4/84	75.1101	\$ 68.00
2143015	5/4/84	75.400	\$ 54.00
2143018	5/9/84	75.400	\$ 85.00
2143019	5/9/84	75.200	\$ 68.00
2274202	5/11/84	75.200	\$225.00
2142744	5/15/84	75.1725(a)	\$ 50.00
		Total	\$972.00

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Citation No.	Date	30 C.F.R. Section	Assessment
2143007	5/3/84	77.205(e)	\$ 68.00
9917153	6/12/84	70.208(a)	\$ 20.00
9917154	6/12/84	70.208(a)	\$ 20.00
		Total	\$108.00

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Respondent IS ORDERED to pay civil penalties in the amounts shown above for the violations in question, and payment is to be made to the petitioner within thirty (30) days of the date of this order.

George A. Koutras
Administrative Law Judge