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SOL (MSHA) v. JIM WALTER RESOURCES
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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 PROCEEDINGS

Docket No. SE 85-2
A.C. No. 01-01247-03619

v.

No. 4 Mine

JIM WALTER RESOURCES, INC.,
RESPONDENT

Appearances: George D. Palmer, Esq., Office of the Solicitor,
U.S. Department of Labor, Birmingham, Alabama,
for Petitioner; Harold D. Rice, Esq., and
R. Stanley Morrow, Esq., Birmingham, Alabama,
for Respondent.

DECISION

Before: Judge Broderick

STATEMENT OF THE CASE

In this case, the Secretary seeks penalties for two alleged violations of the mandatory safety standard contained in 30 C.F.R. 75.1403-5(g). The parties have submitted the case for decision on stipulated facts.

STIPULATION

The parties have stipulated to the following facts and issues:

1. The Operator is the owner and operator of the subject mine.
2. The Operator and the mine are subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.
3. The Administrative Law Judge has jurisdiction in this case.

4. The MSHA Inspector who issued the subject citations was a duly authorized representative of the Secretary.
5. True and correct copies of the subject citations were properly served upon the Operator.
6. Copies of the subject citations and determination of violation at issue are authentic and may be admitted into evidence for the purpose of establishing its issuance, but not for the purpose of establishing the truthfulness or relevance of any statements asserted therein.
7. Imposition of a penalty in this case will not affect the Operator's ability to do business.
8. The alleged violation was abated in good faith.
9. The Operator's history of prior violations is average.
10. The Operator's size is medium.

The parties agree that the condition or practice described in the citation occurred and that the belt described in the citation was a coal-carrying belt.

The parties further agree that the decision in Docket No. SE 84-23 on the coal-carrying issue should determine the merit of this case. The mine inspector's evaluation of the violation is set forth in Section III at the bottom of the citation attached hereto as "Exhibit A". The petitioner's analysis of the violation against petitioner's regulation for determining the penalties to be proposed is set forth on the second page of the proposed assessment. The parties agree that the proposed penalties of \$119 and \$157 are appropriate if violations are found to have occurred.

I accept the stipulation and find the facts stipulated to.

CONCLUSIONS OF LAW

Subsequent to the submission of the above stipulations, the Commission decided the cases of Secretary v. Jim Walter I, 7 FMSHRC ----, Docket No. SE 84-23 (April 29, 1985) and Secretary v. Jim Walter II, 7 FMSHRC ----, Docket No. SE 84-57 (April 29, 1985). They decided that 30 C.F.R. 75.1403-5(g) applied to coal-carrying belt conveyors. Following that

~1046

decision, I conclude that violations have been established in this case before me. Considering the stipulated facts in the light of the criteria in section 110(e) of the Act, I conclude that the penalties assessed by MSHA are appropriate.

ORDER

Based on the above findings of fact and conclusions of law, Respondent is ORDERED to pay, within 30 days of the date of the decision, the following civil penalties.

CITATION	PENALTY
2482694	\$119
2482622	157
	\$276

James A. Broderick
Administrative Law Judge