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SOUTHERN OHIO COAL v. SOL (MSHA)
SOL (MSHA) v. SOUTHERN OHIO COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SOUTHERN OHIO COAL COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. WEVA 85-97-R
Order No. 2412633; 1/17/85

Martinka No. 1 Mine

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

v.

SOUTHERN OHIO COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 85-218
A.C. No. 46-03805-03652

Martinka No. 1

DECISION

Appearances: David A. Laing and Gregory W. Swart, Esqs.,
Alexander, Ebinger, Fisher, McAlister & Lawrence,
Columbus, Ohio, for Contestant/Respondent;
Howard K. Agran, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia,
Pennsylvania, for Respondent/Petitioner.

Before: Judge Koutras

Statement of the Case

These consolidated proceedings concern a civil penalty proposal filed by MSHA against the Southern Ohio Coal Company pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment in the amount of \$500 for an alleged violation of mandatory safety standard 30 C.F.R. 75.303, as stated in a section 104(d)(2) Order No. 2412633, with special "S & S" findings, issued by an MSHA inspector on January 17, 1985. Docket No. WEVA 85-218 is the civil penalty case, and Docket No. WEVA 85-97-R is the contest filed by Southern Ohio Coal Company challenging the legality of the order and the special "S & S" findings.

The parties engaged in prehearing discovery, and subpoenas were issued compelling the attendance of witnesses at the hearing. However, at the hearing, counsel for the parties advised me that they proposed to resolve the dispute by settlement of the issues involved in the proceedings. Accordingly, the parties were afforded an opportunity to present their arguments in support of the proposed settlement disposition, and I issued a bench decision approving the settlement.

Discussion

The order in question was issued after MSHA Inspector Homer W. Delovich determined that a preshift or onshift inspection was not made at one of the underground working places in the mine. MSHA's counsel explained that a miner wearing a protective helmet suffered minor injuries when he came in contact with a roof bolt and some loose shale fell on him. Counsel contended that had the required examinations been performed, the general roof conditions would have been discovered and corrected prior to anyone working the cited area (Tr. 8, 9). Counsel also indicated that Inspector Delovich confirmed that the required examination had not been conducted, and he did so through interviews with several miners at the mine (Tr. 11).

The operator's counsel pointed out that the miner in question was not seriously injured, and although he left the mine on the day of the incident, he returned to work the next day (Tr. 9). Counsel also asserted that had this case gone to hearing, he would argue that the foreman who made the work assignments on the day in question did not know, nor should have known, that the miner who was injured was in the area in question. Counsel asserted further that the cited area was part of an escapeway which had received its weekly inspection the day prior to the accident (Tr. 11, 12).

Under the terms of the settlement, Southern Ohio Coal Company agreed to pay the full proposed civil penalty assessment of \$500. MSHA's counsel asserted that the parties also agreed that the violation would be modified from a section 104(d)(2) order to a section 104(a) citation, and that the inspector's "S & S" finding would stand. Counsel confirmed that based on further information, he has determined that the violation was not an unwarrantable failure and that he had consulted with Inspector Delovich in this regard (Tr. 4, 5). A copy of Inspector Delovich's modification of his order was filed with me after the hearing, and it is a matter of record.

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The parties stipulated that Southern Ohio Coal Company is a large mine operator and that the payment of the assessed civil penalty will not adversely affect its ability to continue in business (Tr. 7). They also agreed that the violation was promptly abated in good faith (Tr. 8). MSHA's counsel indicated that the degree of negligence was moderate, and as previously indicated, the injury suffered by the miner was not serious. With regard to the prior history of violations, the operator's counsel stated that based on information provided by the company safety director, he was unaware of any prior violations of section 75.303 for failure to conduct required examinations (Tr. 9).

Conclusion

After careful consideration of all of the arguments presented by the parties in support of their proposed settlement disposition of the civil penalty case, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, IT IS APPROVED.

ORDER

The Southern Ohio Coal Company IS ORDERED to pay a civil penalty in the amount of \$500 for the violation in question, and payment is to be made to MSHA within thirty (30) days of the date of this decision. Upon receipt of payment, the civil penalty case is dismissed. The operator's motion to withdraw its contest is granted, and it is dismissed.

George A. Koutras
Administrative Law Judge