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WESTMORELAND COAL v. SOL (MSHA)

SOL (MSHA) v. WESTMORELAND COAL

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

WESTMORELAND COAL COMPANY,  
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. WEVA 82-152-R  
Order No. 886894; 1/12/82

Eccles No. 6 Mine

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

v.

WESTMORELAND COAL COMPANY,  
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 82-369  
A.C. No. 46-01514-03501

Eccles No. 6 Mine

DECISION

Before: Judge Melick:

This case is before me on remand by the Commission on September 30, 1985, for reconsideration of the amount of civil penalty assessed in light of the Commission's finding that the violation in this case "did not result from Westmoreland's indifference, willful intent, or serious lack of reasonable care."

The standard at issue, 30 C.F.R. 75.202, requires that "overhanging" ribs shall be "taken down" or "supported." The Commission has affirmed the factual findings in this case that Westmoreland Coal Company violated that standard by allowing work to be done beneath a known overhanging rib that had neither been "taken down" nor "supported." This action or omission resulted in the death of a miner allowed to work beneath that overhanging rib.

It is established that the responsible section foreman knew of this violative condition but neither took down nor supported the cited overhanging rib before allowing work to be performed beneath it. Within this framework, a finding of operator negligence is warranted.

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In assessing a penalty herein I have considered that before the fatal rib fall several miners had made unsuccessful efforts to take down the offending rib with a slate bar and with the roof bolter canopy and that some concluded there was no hazard. I have also considered that the foreman himself had tried unsuccessfully to bring it down, striking it four or five times with a slate bar (T. 227). I also note however that the foreman failed to take other measures known and accepted in the industry for removing such a rib. The miner operator, Albert Honaker, testified that "if that man had said he thought it was unsafe and wanted me to take the miner back in there and cut it down, sure, I'd have cut it down." (Tr. 256). There is, moreover, no evidence that the stopping could not have been built in a location other than beneath this violative overhanging rib.

Considering all the criteria under section 110(i) of the Federal Mine Safety and Health Act of 1977 as reviewed in my decision in this case dated January 18, 1983, (5 FMSHRC 132) and in particular, reconsidering the negligence of the mine operator as directed by the Commission, I find that a civil penalty of \$8,000 is appropriate.

Wherefore Westmoreland Coal Company is directed to pay a civil penalty of \$8,000 within 30 days of the date of this decision.

Gary Melick  
Administrative Law Judge