

CCASE:  
SOL (MHSA) V. RAVEN RED ASH COAL  
DDATE:  
19860213  
TTEXT:

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

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
ON BEHALF OF  
LARRY COLLINS,  
EARL KENNEDY,  
COMPLAINANTS

DISCRIMINATION PROCEEDING  
  
Docket No. VA 85-32-D  
MSHA Case No. NORT CD 84-7  
  
Mine No. 1

v.

RAVEN RED ASH COAL  
CORPORATION,  
RESPONDENT

ORDER

During the course of the hearing held in this matter in Abingdon, Virginia, on November 13, 1985, MSHA's counsel offered exhibits CÄ9 and CÄ10, which are computer print-outs detailing the respondent's history of civil penalty assessments for the period August 23, 1982 through August 22, 1984. Exhibit CÄ9 is the compliance record for the respondent Raven Red Ash Coal Corporation, and exhibit CÄ10 is the compliance record for all mines operated by Mr. David Jordan, President of the Raven Red Ash Coal Corporation.

Respondent's counsel raised an objection to the relevancy and accuracy of the information contained in the exhibits, and he argued that some of the dates reflected on the print-outs are for periods during which the respondent's mine was operated under a different corporate name, namely the Virginia and West Virginia Coal Corporation. Respondent's counsel raised a question concerning the corporate ownership of the Virginia and West Virginia Coal Corporation, and suggested that any prior citations attributable to that corporate entity should not be considered as part of the history of compliance for the respondent Raven Red Ash Coal Corporation.

I reserved any ruling on the admissibility of exhibits CÄ9 and CÄ10, and permitted the parties an opportunity to file further arguments on the questions raised.

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By letter and enclosures filed with me on January 9, 1986, MSHA's counsel has submitted further arguments on the question concerning the respondent's history of prior violations. Counsel has also submitted proposed exhibits CÄ11, CÄ12, CÄ13, and CÄ14, which are copies of MSHA Legal Identity Reports and related correspondence reflecting Mr. Jordan's corporate ownership and/or interest in the Virginia and West Virginia Coal Corporation and the Raven Red Ash Coal Corporation. Proposed exhibit CÄ15 is an MSHA document explaining the various computer codes and column headings as shown on the computer print-outs. Counsel requests that all of these exhibits, including the disputed exhibits CÄ9 and CÄ10, be received in evidence and made a part of the record in this proceeding.

The respondent has not responded to MSHA's letter of January 9, 1986, and has filed no additional arguments with respect to the history of prior violations issue. By letter dated January 16, 1986, respondent's counsel advised that the respondent will stand on the present record and will not file any additional briefs in this matter.

Upon due consideration of the submissions made by MSHA's counsel on January 9, 1986, I conclude and find that the information submitted is relevant to this proceeding. In the event that I find a violation of section 105 (c) of the Act has been established, the respondent's history of prior violations is relevant to any civil penalty assessment which may be assessed by me for the violation. Accordingly, MSHA's request to receive exhibits CÄ9 through CÄ15 as part of the record in this case IS GRANTED, and the respondent's objections ARE DENIED.

George A. Koutras  
Administrative Law Judge