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YOUGHIOGHENY & OHIO V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

THE YOUGHIOGHENY AND OHIO
COAL COMPANY,
CONTESTANT

CONTEST PROCEEDINGS

Docket No. LAKE 85-74-R
Order No. 2330533; 4/9/85

v.

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

Docket No. LAKE 85-75-R
Order No. 2330535; 4/9/85

Nelms No. 2 Mine

DECISION

Appearances: Robert Kota, Esq., Youghiogheny and Ohio Coal
Company, St. Clairsville, Ohio, for Contestant;
Patric M. Zohn, Esq., Office of the Solicitor,
U.S. Department of Labor, Cleveland, Ohio, for
Respondent.

Before: Judge Melick

These consolidated proceedings are before me upon the
Notices of Contest filed by Youghiogheny and Ohio Coal Company (Y
& O) under section 105(d) of the Federal Mine Safety and Health
Act of 1977, 30 U.S.C. 801 et seq., the "Act," to challenge the
issuance by the Secretary of Labor of two withdrawal orders (Nos.
2330533 and 2330535) under the provisions of section 104(d)(2) of
the Act. (FOOTNOTE 1)

Hearings were held concerning the merits of these orders on September 25, 1985, but a final decision was deferred pending decisions by other judges concerning the validity of the underlying section 104(d)(1) citation and order that were conditions precedent to the validity of the orders at bar. A determination upholding the violations cited in the instant orders and a finding that the violations were caused by the "unwarrantable failure" of the mine operator were previously made by decision of the undersigned dated October 29, 1985 (Secretary v. Youghiogeny and Ohio Coal Company, Docket No. LAKE 85Ä90, Appendix A).

The underlying citation (No. 2331148) and order (No. 2328954) were subsequently upheld respectively by decisions of Commission Judges in Youghiogeny and Ohio Coal Company v. Secretary of Labor, Docket No. LAKE 85Ä76ÄR (March 7, 1986, Judge Maurer), and Secretary of Labor v. Youghiogeny and Ohio Coal Company, Docket No. LAKE 85Ä63 (February 4, 1986, Judge Broderick). Accordingly the section 104(d)(2) orders at bar (Orders Nos. 2330533 and 2330535) are affirmed and the contests of those orders are dismissed.

Gary Melick
Administrative Law Judge

1 Section 104(d)(2) provides as follows:

"If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall promptly be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) until such time as an inspection of such mine discloses no similar violations. Following an inspection of such mine which discloses no similar violations, the provisions of paragraph (1) shall again be applicable to that mine."

Section 104(d)(1) provides as follows:

"If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this Act."