

CCASE:
SOL (MSHA) V. PITTSBURG & MIDWAY COAL MINING
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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 PROCEEDING

Docket No. WEST 86-11
A.C. No. 05-00303-03508

v.

Edna Mine

THE PITTSBURG & MIDWAY
COAL MINING CO.,
RESPONDENT

DECISION

Appearances: James H. Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
John A. Bachmann, Esq., The Pittsburg & Midway
Coal Mining Co., Denver, Colorado,
for Respondent.

Before: Judge Carlson

This civil penalty proceeding came regularly on for hearing at Denver, Colorado on May 16, 1986. The case involved two citations charging that pins in the steering mechanism of two large coal-hauling trucks were loose. The inspector cited this alleged condition as a violation of the mandatory safety standard published at 30 C.F.R. 77.404(a) which requires that mobile equipment be maintained in safe operating condition.

The Secretary put on his evidence and rested. As respondent proceeded with its evidence it became ever more apparent that witnesses for the two parties were not only in disagreement about the design characteristics of the steering mechanisms, but that there were divergent notions as to which parts of the trucks were actually the subject of the citations. During a recess this judge suggested to counsel that they confer with a view to resolving the differences about which parts were involved. The parties did so.

When the hearing reconvened, counsel for the Secretary announced that there had been a good faith mistake-of-fact on the part of the enforcement authorities, and that the Secretary therefore moved to vacate both citations. Counsel for respondent agreed with that disposition, and moved for

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leave to withdraw respondent's plea for attorney fees and costs (Tr. 98Ä99).

Having heard the evidence to that point in the case, this judge believed that the motions of the parties were highly appropriate and announced his intention to grant them.

Accordingly, both citations in the case are hereby ORDERED vacated with prejudice, together with the proposed penalties; and respondent's plea for attorney fees and costs is ORDERED withdrawn and stricken. This proceeding is dismissed.

John A. Carlson
Administrative Law Judge