

CCASE:  
SOL (MSHA) V. SUGAR HILL LIMESTONE  
DDATE:  
19861209  
TTEXT:

~1898

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

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

CIVIL PENALTY PROCEEDINGS

Docket No. PENN 86-165  
A.C. No. 36-02786-03510

v.

Docket No. PENN 86-192  
A.C. No. 36-02786-03511

SUGAR HILL LIMESTONE COMPANY,  
RESPONDENT

Sugar Hill Strip

DECISION

Before: Judge Melick

By notice dated August 12, 1986, these cases were set for consolidated hearings to commence on October 7, 1986, in State College, Pennsylvania. The Secretary thereafter requested postponement because of the absence of a witness and the Respondent concurred in the request. By mailgram notice issued October 3, 1986 (followed by another notice by certified mail dated October 6, 1986) those hearings were rescheduled to commence November 4, 1986, in Pittsburgh, Pennsylvania. On October 9, 1986, this office received a copy of the above mailgram returned from Russell A. Smith on behalf of Respondent Sugar Hill Limestone Company (Sugar Hill) with the following handwritten notice thereon:

As we discussed on Friday 10/3/86-Pittsburgh would be farther from us than State College. Could we possibly have these hearings in Jefferson County. We cannot afford to lose a day of work to attend these hearings.

The undersigned responded to Mr. Smith on October 14, 1986, indicating that it was apparent that the hearings in the cases would in any event take a full day, that several other Commission cases were already scheduled for hearings in Pittsburgh that same week and that his particular request could not be accommodated. It was further noted that the distance from the mine site to Pittsburgh was not excessive and Mr. Smith was reminded that the failure of a representative to appear at the scheduled hearing could result in a default decision against the Respondent.

~1899

A notice of the specific hearing site was thereafter issued on October 23, 1986, designating the assigned courtroom in Pittsburgh. Subsequently, one day before the scheduled hearing, this office received a letter from Sugar Hill stating as follows:

This letter is to inform you once again that there is no way that we can make a hearing in Pittsburgh. It is not a seventy mile trip but closer to one hundred and fifteen or twenty miles and when you consider Pittsburgh traffic a three to four hour trip.

We feel since this happened in Jefferson County and not Allegheny that is where the case should be handled.

We could arrange the use of the Reynoldsville Fire Hall Meeting Room at no cost if that would be suitable.

No representative of the operator subsequently appeared at the hearings as scheduled and accordingly an order to show cause was issued pursuant to Commission Rule 63, 29 C.F.R. 2700.63, requiring a response on or before November 17, 1986. In a letter received November 17, 1986 Mr. Smith stated as follows:

As we explained in our letter of 10/28/86; we feel we should be entitled to a hearing in Jefferson County. It is impossible for us to travel to Pittsburgh for hearing. We have many responsibilities to take care of daily and these must be done, and can be done in the time it would take us to travel the 100 plus miles each way. Another reason for us not reporting on November 4th was due to elections being held and to be in Pgh by 9:00 A.M., we would have had to leave before the polls opened. We hope you will find these adequate reasons.

It is the established law that the location of hearing sites is in the discretion of the Commission Administrative Law Judge. "In setting the hearing site he shall give due regard to the convenience of and necessity of the parties or their representatives and witnesses, the availability of suitable hearing facilities, and other relevant factors." 5 U.S.C. 554(b); 30 U.S.C. 815(d); Commission Rule 51, 29 C.F.R. 2700.51; Secretary v. Cut Slate Inc., 1 FMSHRC 796 (1979). See also Secretary v. Sewell Coal Company, 2 FMSHRC 2479 (1980). In selecting a hearing site the judge

~1900

must therefore balance the public interest and due execution of the agency's functions with the convenience of the parties. Sewell Coal Company, supra at 2481.

In balancing these interests in these cases the undersigned was confronted with the fact that 3 other cases from the same region had also been scheduled for hearing the same week in Pittsburgh, that because of his caseload the judge had already scheduled trials for every work week for the following 4 months none of which were located in areas closer to Reynoldsville, and that while the judge had other cases to set for hearing in Pittsburgh after March he had no cases involving litigants in areas closer to Reynoldsville.

The litigants in the other cases before this judge are entitled to prompt hearings and disposition of their cases, and, accordingly, to best utilize limited judicial resources and maintain prompt disposition of cases the undersigned generally schedules cases for hearing in a centralized geographical location for the convenience of the maximum number of litigants.

In these particular cases I also considered that the distance from the mine site to Pittsburgh was not excessive (administrative notice may be taken of the American Automobile Association's estimate of 95 miles from Reynoldsville, Pennsylvania to Pittsburgh) and that counsel for the Secretary had proffered that based on the number of witnesses he anticipated calling in these cases that trial would take a full day whether it was held in Pittsburgh or Reynoldsville. Mr. Smith also claims he would have been unable to vote had he travelled to Pittsburgh. However he overlooks the availability of absentee balloting, a simple procedure which has been followed by the undersigned on this and many other occasions.

The lack of a courtroom or comparable facility and the lack of accommodations in the Reynoldsville area meeting the governmental budgetary ceiling were also factors, albeit secondary, considered in locating these hearings in Pittsburgh.

Within this framework I find that Sugar Hill must be held in default for failing to appear at the scheduled hearings in Pittsburgh. Accordingly the penalties proposed by the Secretary in these proceedings are now final. Commission Rule 63, 29 C.F.R. 2700.63

~1901

ORDER

The Sugar Hill Limestone Company is hereby directed to pay civil penalties of \$1,492 within 30 days of the date of this decision.

Gary Melick  
Administrative Law Judge