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JIM RESOURCES V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

JIM WALTER RESOURCES, INC.,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. SE 86-125-R
Order No. 2811604; 7/21/86

No. 4 Mine

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

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 87-5
A.C. No. 01-01247-03726

No. 4 Mine

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

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 86-136
A.C. No. 01-01247-03719

No. 4 Mine

JIM WALTER RESOURCES, INC.,
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket
Citation No. 2810255; 9/26/86

Docket No. SE 87-2-R
Citation No. 2810256; 9/26/86

No. 4 Mine

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

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 87-21
A.C. No. 01-01247-03735

No. 4 Mine

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JIM WALTER RESOURCES, INC.,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. SE 87-3-R
Citation No. 2810510; 9/22/86

No. 7 Mine

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

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 87-55
A.C. No. 01-01401-03661

No. 7 Mine

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

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 87-14
A.C. No. 01-01247-03734

No. 4 Mine

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

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 87-18
A.C. No. 01-01247-03731

No. 4 Mine

JIM WALTER RESOURCES, INC.,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. SE 87-26-R
Citation No. 2811239; 11/25/86

No. 4 Mine

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

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 87-48
A.C. No. 01-01247-03747

No. 4 Mine

DECISION

Appearances: William Lawson, Esq., Office of the Solicitor,
U.S. Department of Labor, Birmingham., Alabama,
for Petitioner; R. Stanley, Morrow, Esq., and
Harold D. Rice, Esq., Birmingham, Alabama, for
Respondent.

Before: Judge Merlin

The above-captioned cases were set for hearing pursuant to duly issued notices of hearing of various dates. When they came on for hearing as scheduled, counsel for both parties advised that the penalty cases had been settled and that the notices of contest would be withdrawn subject to approval by the Administrative Law Judge. Other matters which also were set for hearing on the same date and which preceded to hearing on the merits, are contained in a separate transcript and are the subject of a separate decision.

In these cases the parties agreed to the following stipulations: (1) the operator is the owner and operator of the subject mine; (2) the operator and the mine are subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977; (3) the Administrative Law Judge has jurisdiction of this case; (4) the inspectors who issued the subject citations and orders were duly authorized representatives of the Secretary; (5) true and correct copies of the subject citations and orders were properly served upon the operator; (6) the operator's size is medium; (7) imposition of penalties herein will not affect the operator's ability to continue in business; (8) the violations were abated in good faith; and (9) the operator's history of prior violations is average for its size.

SE 87A5 involves two citations. Citation No. 2811709 was issued for a violation of 30 C.F.R. 75.500(a). The Solicitor advised that a non-permissible switch box and starter box were used in the last open cross-cut of the No. 5 section. According to the Solicitor, the gravity of the violation was serious and negligence was high. The original assessment was \$800 and the proposed settlement was for that amount. Operator's counsel expressed agreement to pay the proposed settlement. Order No.

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2811604 was originally a section 104(d)(2) order issued for a violation of 30 C.F.R. 75.200. The original assessment was \$800 and the proposed settlement was \$400. The violation was for missing ribs bolts. The Solicitor advised at the hearing that the (d) order had been modified to an (a) citation because the operator had already begun replacing the bolts when the violation was cited. Accordingly, negligence was much less than originally thought. I approved the proposed settlements from the bench.

Operator's counsel then moved to withdraw the related notice of contest, SE 86Å125-R. This motion was granted and the case dismissed from the bench.

SE 86Å136 involves five citations. All were based upon a 1981 notice of safeguard. In accordance with a prehearing order, the parties submitted extensive prehearing statements. Upon further review of the matter, the operator agreed to pay \$259 for each citation, which was the original assessment. The Solicitor accepted this proposal and recommended settlements based thereon. At the hearing, the Solicitor advised that although sanding devices are not always used, they are necessary on occasion and that, therefore, the violations were serious. He further stated that the operator was negligent. Based upon the representations of the Solicitor and operator's counsel, I accepted the proposed settlements.

SE 87Å21 involves two citations. Citation No. 2810255 was issued for a violation 30 C.F.R. 75.1722(b). According to the Solicitor, an inadequate guard was being used around the No. 4 belt conveyor drive. The violation was serious. The negligence of the operator was mitigated because it was using a fence enclosure as a guard. The inspector found that the fence was inadequate, even aside from the fact that its gate was missing. The operator promptly abated the violation by constructing localized guards immediately around the conveyor drive's moving parts. I accepted the Solicitor's representations that the operator's negligence was less than originally thought because it did, in fact, have some guarding around the belt conveyor. The original assessment was \$249 and the proposed assessment was \$150. I approved the proposed settlement from the bench. Citation No. 2810256 was issued for a violation 30 C.F.R. 75.1403(5)(j) for a failure to guard an area outby the No. 4 section belt conveyor drive. In this instance, the operator had the required crossover which employees could have used to get from one side of the belt to the other. However, the crossover was 70 feet away from the conveyor drive and therefore, too inconvenient for its purpose. The operator abated the condition by constructing a crossover guard in the immediate area of the conveyor drive. The violation was serious, but here again, the Solicitor represented that the operator's negligence was less than originally thought since it did have a crossover, although not in the most suitable location. The original assessment was \$192 and the proposed settlement was \$150. I approved the proposed settlement from the bench.

Operator's counsel then moved to withdraw the related notice of contest proceedings, SE 87Ä1-R and SE 87-2-R. This motion was granted and the contest cases were dismissed from the bench.

SE 87Ä55 involves Citation No. 2810510 which was issued for a violation of 30 C.F.R. 75.400 because of accumulations of coal dust including float coal dust deposited on rock dust surfaces and loose coal accumulated in various locations. The Solicitor advised that for the most part these were not typical accumulations, but rather resulted from horizontal drilling into the coal seam by the operator in an attempt to liberate methane. The operator's activities were permitted under applicable ventilation and dust plans which at that time allowed it to inert coal shavings left from its drilling with rock dust. Subsequently, applicable plans were changed so that such activities were not allowed. The original assessment was \$136, but in light of the unusual circumstances, the parties recommended a settlement in the amount of \$50, which I approved from the bench.

Operator's counsel then moved to withdraw the related notice of contest, SE 87Ä3-R. This motion was granted and the case dismissed from the bench.

SE 87Ä14 involved one citation which the Solicitor advised had been vacated since it was improperly predicated upon a prior safeguard. The Solicitor moved to dismiss and the motion was granted from the bench.

SE 87Ä18 involved Citation No. 2353478 issued for a violation of 30 C.F.R. 75.200 because employees went under unsupported roof. The Solicitor advised that the presence of men under unsupported roof was an instantaneous reaction to the sudden occurrence of a methane ignition. The original assessment was \$500 and the proposed settlement was \$200. In view of the emergency nature of the situation, I approved the recommended settlement from the bench.

SE 87Ä48 involved Citation No. 2811239 which was issued for a violation of 30 C.F.R. 75.1403 when an individual operating a personnel carrier on the track haulage, proceeded without obtaining the right-of-way from the dispatcher. The Solicitor advised that the operator had in effect a well-established dispatcher method of controlling underground rail traffic and that all employees were familiar with this system and were aware that they should obtain right-of-way clearance prior to traveling on the rail system. In addition, the company's safety program required that all vehicles obtain clearance from the dispatcher. Here the employee's actions were contrary to safety rules enforced by the operator. In an effort to deter such behavior in the future, the operator issued a formal reprimand to the employee for his misconduct. Accordingly, the Solicitor

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represented that although the violation was serious, the negligence of the operator was low. Operator's counsel advised that under the contract with the union, reprimand was the strongest action the company could take against the individual in this instance. The original assessment was \$371 and the proposed settlement was \$150. Based upon the information furnished by counsel, the proposed settlement was approved from the bench.

Operator's counsel then moved to withdraw SE 87Ä48, the related notice of contest. This motion was granted and the case dismissed from the bench.

In light of the foregoing, the operator is Ordered to Pay the amounts as set forth above.

It is further Ordered that the penalty petition and notices of contest be Dismissed as set forth above.

Paul Merlin
Chief Administrative Law Judge