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

PEABODY COAL COMPANY,
CONTESTANT

CONTEST PROCEEDING

v.

Docket No. WEST 87-113-R
Citation No. 2830921; 2/11/87

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

Black Mesa Mine

DECISION

Before: Judge Lasher

The Contestant, Peabody Coal Company, in its Notice of Contest filed herein on March 9, 1987, contested the so-called "significant and substantial" and "unwarrantable failure" allegations of the subject Citation No. 2830921, which was issued under Section 104(d)(1) of the 1977 Mine Act.

Pursuant to agreement reached by the parties, Contestant agrees to pay a reduced, administrative penalty (no penalty proposal has been filed with this Commission) of \$50.00 and withdraw its Notice of Contest in return for Respondent MSHA's agreement to the modification of the Citation in the following respects:

- (a) Deletion of the "unwarrantable failure" nature of the Citation by striking, in line 12 of the Citation, the authority shown for its issuance, "104(d)(1)," and substituting therefor "104(a);
- (b) Deletion of the "Significant and Substantial" designation shown on line 10C of the Citation;
- (c) Changing the degree of negligence (charged at line 11 of the Citation) from "High" to "Moderate".

Respondent agreeing to the above-specified modifications of the Citations, they are so ordered; to effectuate the settlement reached and the prompt and amicable resolution of this matter, and as requested by the parties, the Contestant, Peabody Coal Company, shall forthwith pay MSHA in accordance with its agreement and established procedures a penalty of \$50.00; Contestant's withdrawal of its Notice of Contest is approved (29 C.F.R. 2700.11) and this proceeding is dismissed.

Michael A. Lasher, Jr.
Administrative Law Judge