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SOL (MSHA) V. QUINLAND COALS
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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. WEVA 85-169 A.C. No. 46-02493-03536
v.	Quinland No. 1 Mine
QUINLAND COALS, INC., RESPONDENT	

DECISION ON REMAND

Before: Judge Fauver

On September 30, 1987, the Commission remanded this case for a decision whether the violation of 30 C.F.R. 75.200 (charged in Order No. 2144040) was the result of an "unwarrantable failure to comply with that mandatory safety standard" and for such futher proceedings as are then appropriate.

In Florence Mining Company, PENN 86Ä297ÔR and PENN 87Ô16 (June 30, 1987), now pending review by the Commission, I held that the legislative history of 104(d) of the Act shows that the phrase "unwarrantable failure to comply" means "the failure of an operator to abate a condition or practice constituting a violation of a mandatory standard it knew or should have known existed, or the failure to abate such a condition or practice because of indifference or lack of reasonable care." I also held that I do not interpret the Commission's decision in United States Steel Corporation, 6 FMSHRC 1423 (1984), as requiring a departure from the legislative history definition of "unwarrantable failure to comply." As I stated in Florence Mining Company, the Commission's statement in United States Steel, as follows:

> but we concur with the Board to the extent that an unwarrantable failure to comply may be proved by a showing that the violative condition or practice was not corrected or remedied, prior to issuance of a citation or order, because of indifference, willful intent, or a serious lack of reasonable care

does not purport to be a restrictive definition based upon reconsideration of the legislative history, but appears to me to

be merely one kind of proof of an "unwarrantable failure to comply."

Whether the legislative history definition, stated in my decision in Florence Mining Company, or the example added by the Commission in United States Steel Corporation is applied in this case, I find on remand that Respondent demonstrated an unwarrantable failure to comply with the cited standard. The roof conditions were highly dangerous, they were known by mine management or should have been known by mine management for at least one or two months before the order charging a violation of 30 C.F.R. 75.200. The conditions should have been corrected long before they were discovered by the inspector on October 11, 1984. Even though Respondent's witness McClure stated an opinion that the roof was adequately supported (an opinion I have rejected in favor of Inspector Thompson's opinion of a dangerous roof condition), McClure was aware that the roof control plan required that broken timbers be replaced and that there were some broken timbers that had not been replaced. On balance, I find that a preponderance of the substantial, reliable, and probative evidence shows that the violative roof condition was known by Respondent or should have been known by Respondent before October 11, 1984, and the failure to correct this condition was due to an unwarrantable failure to comply with 30 C.F.R. 75.200.

In light of this finding, I find that my previous assessment of a civil penalty for $800 is appropriate for this violation.

ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay the total civil penalties assessed in this case, in the amount of $1,300, within 30 days of this Decision on Remand.

William Fauver
Administrative Law Judge