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YOUGHIOGHENY & OHIO V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

YOUGHIOGHENY & OHIO COAL
COMPANY,
CONTESTANT

CONTEST PROCEEDING

Docket No. LAKE 86-30-R
Order No. 2823831; 11/19/85

v.

Nelms No. 2 Mine

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

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

CIVIL PENALTY PROCEEDING

Docket No. LAKE 86-56
A.C. 33-00968-03629

v.

Nelms No. 2 Mine

YOUGHIOGHENY & OHIO COAL
COMPANY,
RESPONDENT

DECISION

Before: Judge Melick

These cases are before me upon remand by the Commission on December 11, 1987, to reconsider the civil penalty assessment for the violation charged in Order No. 2823831. Youghiogheny & Ohio Coal Company v. Secretary of Labor etc., 9 FMSHRC ¶¶¶¶ (Docket No. LAKE 86-21-AR et. al.). In its decision the Commission held that the so called "hole through" violation cited in the order was not "significant and substantial". Although the violation resulted in a large area of unsupported roof being exposed the Commission did not believe that there was a reasonable likelihood that a roof fall would result in an injury. It stated as follows:

It is undisputed that the section foreman operating the continuous mining machine was under supported roof at all times when he made the fan cuts and the "hole through." [citations omitted] It also is undisputed that Y & O was not going to mine further the rooms involved; these were the last cuts. Thus, had normal mining operations continued, no miners would have entered the rooms in which the "hole through" occurred.

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In addition, Y & O posted danger signs at the entrance to the rooms leading to the "hole through." In light of these facts, we hold that substantial evidence does not support the judge's conclusion that the violation significantly and substantially contributed to a mine safety hazard.

If one accepts these findings, then the violation must be characterized as non-serious. The violation was, however, the result of a high degree of negligence and the operator has a substantial history of violations. In determining an appropriate civil penalty for the violation I am also considering the factors noted in my decision below that "the mine operator abated the cited conditions in a timely and good faith manner, [and it] was moderate in size." (8 FMSHRC at pages 954-955). Under the circumstances, and in consideration of the Commission's findings noted herein, a civil penalty of \$300 is appropriate.

ORDER

The Youghiogheny & Ohio Coal Company is hereby ordered to pay a civil penalty of \$300 for the violation charged in Order No. 2823831 and, if it has not already done so, to pay civil penalties totalling \$1,272 within 30 days of the date of this decision for the violations charged in the captioned civil penalty proceeding.

Gary Melick
Administrative Law Judge
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