

CCASE:
RUSHTON MINING V. SOL (MSHA)
DDATE:
19880411
TTEXT:

~540

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

RUSHTON MINING COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. PENN 86-44-R
Order No. 2404261; 11/5/85

Rushton Mine
Mine I.D. 36-00856

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

v.

RUSHTON MINING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. PENN 86-92
A.C. No. 36-00856-03554

Rushton Mine

DECISION ON REMAND

Before: Judge Broderick

On this case, the Commission reviewed my decision insofar as it related to order 2404227 issued under section 104(d)(2) of the Act and alleging a violation of 30 C.F.R. 75.1434(a)(2). On March 22, 1988, the Commission affirmed my conclusion that a violation occurred, and reversed my conclusion that it resulted from Rushton Mining Company's (Rushton's) unwarrantable failure to comply with the mandatory standard. Rushton Mining Company, 10 FMSHRC ¶¶¶¶ (1988). The proceeding was remanded to me for reconsideration of the civil penalty.

Rushton is a large operator. It had a moderate history of prior violations. The violation here was promptly abated in good faith. The violation was moderately serious and resulted from Rushton's ordinary negligence. Considering these conclusions under section 110(i) of the Act, I believe that \$375 is an appropriate penalty for the violation found.

~541

ORDER

Rushton is ORDERED TO PAY within 30 days of the date of this decision the sum of \$375 for the violation of 30 C.F.R. 75.1434(a)(2) charged in order 2404227 (modified by the Commission to a 104(a) citation).

James A. Broderick
Administrative Law Judge