

CCASE:
SOL (MSHA) V. ENERGY FUELS COAL
DDATE:
19890113
TTEXT:

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

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

CIVIL PENALTY PROCEEDINGS.

Docket No. WEST 88-21
A.C. No. 05-03455-03554

v.

Docket No. WEST 88-52
A.C. No. 05-03455-03555

ENERGY FUELS COAL, INC.,
RESPONDENT

Southfield Mine

DECISION

Appearances: James H. Barkley, Esq., Robert J. Murphy, Esq.,
Office of the Solicitor, U.S. Department of Labor,
Denver, Colorado,
for Petitioner;
Phillip D. Barber, Esq., Welborn, Dufford, Brown &
Tooley, Denver, Colorado,
for Respondent.

Before: Judge Cetti

These cases are before me on petition for civil penalty filed by the Secretary of Labor, pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (the "ACT"), charging the Energy Fuels Coal, Inc., (Energy) with violating five certain mandatory regulatory standards found in 30 C.F.R. and proposing certain civil penalties for the alleged violations. Pursuant to notice, the cases were set for hearing on the merits.

DOCKET No. WEST 88-21

This docket has four citations. Citation No. 2839449 alleges a significant and substantial violation of 30 C.F.R. 75.1105. Citation Nos. 2839451 and 2839452 allege violations of 30 C.F.R. 75.323 and Citation No. 2839454 alleges a wire bushin violation of 30 C.F.R. 75.505.

After taking several hours of testimony there was a recess during which the parties discussed settlement. On the record counsel for the Secretary advised that due to the insufficiency of the evidence the Secretary moved to vacate Citation No. 2839451 and 2839452, there was no objection to the motion and the motion was granted.

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With respect to Citation No. 2839449 the Secretary moved to amend the citation to delete the allegation characterizing the violation as "significant and substantial". Respondent in turn withdrew its notice of contest to that citation as amended and agreed to pay the \$85.00 original proposed civil penalty. Counsel for the Secretary stated that the gravity of the violation was less than originally assessed.

With respect to Citation No. 2839454 alleging a wire into a junction box was not properly bushed, the respondent withdrew its notice of contest to the citation and to the Secretary's original proposed civil penalty.

Citation Nos. 2839451 and 2839452 allege a violation of 30 C.F.R. 75.323 which requires certain reports to be counter-signed "promptly" by the mine foreman. After taking considerable testimony the Secretary moved to vacate the Citation Nos. 2839451 and 2839452. There was no objection and the motion was granted.

DOCKET NO. WEST 88-52

Citation No. 2939404 alleges a violation of 30 C.F.R. 77.700 which requires grounding of metallic sheaths, armors and conduits enclosing power conductors. The respondent moved to withdraw its contest to the alleged violation and the Secretary's proposed penalty. There was no objection and the motion was granted.

ORDER

Citation No. 2839449 as amended to delete the S&S characterization and Citation Nos. 2839454 and 2939404 are affirmed. Citation Nos. 2839451 and 2839452 and their related proposed penalties are vacated. Energy Fuels Coal Inc. if it has not already done so is directed to pay civil penalties in the sum of \$125.00 within 30 days of the date of this decision.

August F. Cetti
Administrative Law Judge