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FMC WYOMING V. SOL (MSHA)
DDATE:
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

FMC WYOMING CORPORATION,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. WEST 88-312-R
Order No. 2648287; 7/13/88

FMC Trona Mine

ORDER DENYING SECRETARY OF LABOR'S
MOTION TO DISMISS

On August 25, 1988, Contestant FMC mailed its Notice of Contest herein; such was received August 30, 1988. Thereafter, in November, 1988, the Secretary combined the proposed assessment for the Citation involved here- No. 2648482 -- with three other Citations. Such combined assessment for all four Citations was paid by FMC in one check. Thereafter, on January 30, 1989, the Secretary filed a Motion to dismiss, citing Old Ben Coal Company, 7 FMSHRC 205 (1985). In response thereto, FMC pointed out that such payment for Citation 2648482 was made in error, and supported such contention with an affidavit of its Safety Manager, Julius Jones. Mr. Jones affidavit clearly indicates that the payment of the proposed assessment for the subject Citation was made in error. The Commission's decision in Old Ben, supra, clearly points out that its ultimate conclusion that the contest should be barred because of payment of the proposed penalty, might have been different had the mine operator paid such penalty by "mistake", rather than intentionally. I conclude in the circumstances here that payment of the proposed penalty through mistake or inadvertence does not bar a mine operator from proceeding with its contest proceeding where such is timely filed. There is no question in this record that Contestant did indeed intend to contest the subject Citation. Accordingly, the Secretary's Motion to Dismiss is denied.

Michael A. Lasher, Jr.
Administrative Law Judge