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SOL (MSHA) V. SKELTON  
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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 PROCEEDING

Docket No. WEST 88-304-M  
A.C. No. 05-03985-05509

v.

El Jay

SKELTON INCORPORATED,  
RESPONDENT

DECISION

Appearances: Robert J. Murphy, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner.

Before: Judge Lasher

This matter arises upon the filing of a proposal for penalty by the Secretary of Labor on September 30, 1988, seeking assessment of a \$20 penalty against Respondent for a violation of 30 C.F.R. Section 50.30, which standard provides:

"(a) Each operator of a mine in which an individual worked during any day of a calendar quarter shall complete a MSHA form 7000-2 in accordance with the instructions and criteria in Section 50.30-1, et cetera.

(b) Each operator of a coal mine in which an individual worked during any day of a calendar quarter shall report coal production on Form 7000-2."

At the hearing in Denver, Colorado, on February 13, 1989, Petitioner, as above noted, was represented by counsel. Respondent, although receiving actual and legal notification thereof, did not appear at the hearing or notify the presiding Judge or counsel of Petitioner of its intent to be absent therefrom.

Petitioner submitted the testimony of Inspector Roy Trujillo, who issued the subject Citation No. 2640273 on June 6, 1988, and presented documentary evidence which established its position as to the occurrence of the violation and the mandatory penalty assessment criteria set forth in the Federal Mine Safety and Health Act of 1977, 30 U.S.C. Section 815 (1977). (Based thereon, this bench decision was issued at close of hearing).

Inspector Trujillo, a 15 year veteran with MSHA, testified that the subject El Jay Mine of Respondent was, to his knowledge, in operation at the time the citation was issued, and that after examining computer data on June 6, 1988, he determined that the required form had not been filed by Respondent. He then called Ruth Gray, Respondent's secretary, and advised her that he would have to issue a citation.

It appeared that the report in question ultimately arrived, but that the same arrived late. Since Section 50.30 requires the same to be filed within 15 days after the end of each calendar quarter, this constitutes the violation which is here found to have occurred.

Based on evidence of record, and disclosed on the face of the citation it is further found that Respondent is the operator of a mine located in San Miguel County, Colorado, with a history (Exhibit P-1) of six previous violations during the pertinent two-year period preceding June 6, 1988. Four of the total of thirteen prior violations committed by Respondent prior to 1986 were record keeping violations. The proposed penalty of \$20 is found appropriate and is here assessed on the basis that this violation is determined to involve only a "low" degree of negligence, is not serious, and since there is no contention that Respondent did not proceed in good faith to promptly abate the same upon notification thereof.

The burden of establishing inability to pay a penalty at a given monetary level is on the Respondent mine operator in a penalty proceeding and there is no such evidence in this record. In any event, in view of the token penalty of \$20 being assessed here and opinion evidence from the Inspector that such a penalty would not jeopardize Respondent's ability to continue in business, it is concluded that there is no economic basis for reduction of the penalty sought.

ORDER

Citation No. 2640273 is affirmed in all respects.

Respondent, if it has not previously done so, shall pay the Secretary of Labor within 30 days the sum of \$20 as and for a civil penalty herein.

Michael A. Lasher, Jr.  
Administrative Law Judge