

CCASE:  
SOL (MSHA) V. ENERGY FUELS COAL  
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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 PROCEEDINGS

Docket No. WEST 88-168  
A.C. No. 05-03455-03557

v.

Docket No. WEST 88-193  
A.C. No. 05-03455-03558

ENERGY FUELS COAL, INC.,  
RESPONDENT

Southfield Mine

DECISION

Appearances: S. Lorrie Ray, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner;  
Phillip D. Barber, Esq., Welborn, Dufford, Brown,  
and Tooley, Denver, Colorado,  
for Respondent.

Before: Judge Cetti

Statement of the Case

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (Mine Act). The Secretary of Labor on behalf of the Mine Safety and Health Administration, charges the operator of the Southfield Mine, a coal mine located near Florence, Colorado, with violating certain mandatory safety standards set forth in Title 30 Code of Federal Regulations.

Respondent filed a timely answer contesting the existence of certain alleged violations, their characterization as "significant and substantial", and the amount of the proposed penalties.

After notice to the parties the matter was set for an evidentiary hearing on the merits at Denver, Colorado on March 16, 1989. When the matter was called for hearing the parties offered documentary evidence and made motions amending certain citations and proposed penalties and pleadings. After due consideration the motions were granted resolving all issues.

Docket No. WEST 88-168

Order/Citation No. 2839897

The Secretary moved to amend Order No. 2839897 from a 107(a) order to a 104(a) citation. The Citation alleges a violation of

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30 C.F.R. 75.604(b)(c) because three permanent splices in the trailing cable of the Joy shuttle car were improperly made. The Secretary's original \$400.00 proposed penalty was not modified. Respondent in turn moved to withdraw its notice of contest and agreed to pay the Secretary's original proposed \$400.00 civil penalty. There was no objection to either motion and the motions were granted resolving all issued with respect to this citation.

Citation No. 2839894

Citation No. 2839894 alleges a "significant and substantial" 104(a) violation of 30 C.F.R. 75.1725(a). The citation alleges that the audible alarm provided for the Joy shuttle car was inoperative. The Secretary proposed a \$74.00 civil penalty. At the hearing no modification was proposed for the citation or the proposed penalty. Respondent moved to withdraw its notice of contest and agreed to pay the Secretary's original proposed civil penalty of \$74.00. There was no objection to the motion. The motion permitting respondent to withdraw its notice of contest to the citation and pay the original proposed penalty was granted.

Citation No. 2839895

Citation No. 2839895 alleges a "significant and substantial" 104(a) violation of 30 C.F.R. 75.400. The citation alleges that oil, grease, and float coal dust was allowed to accumulate under the lids and in the pump compartments of the LEE NORSE Miner. The Secretary proposed a \$74.00 civil penalty. No change was proposed in the citation or the proposed penalty. Respondent moved to withdraw its notice of contest to the citation and the proposed civil penalty. There was no objection to the motion. The motion permitting respondent to withdraw its notice of contest and to pay the Secretary's original proposed penalty was granted.

Citation No. 2839896

Citation No. 2839896 alleges that two bushings on the shuttle car were not insulating the cable guide from the frame of the shuttle car. It was respondent's position that the bushings were in place, that the bushings did insulate the cable guide from the frame of the shuttle car and that there was no violation. The operator nevertheless did comply with the inspectors "judgment call" and replaced the bushings. The Secretary moved to vacate the citation. There was no objection to the motion. The motion was granted resolving all issues with respect to this citation.

Citation No. 2839893

Citation No. 2839893 alleges a 104(d)(1) violation of 30 C.F.R. 75.400, in that float coal dust allegedly was allowed to accumulate. The operator did not dispute the occurrence of the violation but denied that it was aware of the existence of the condition which it promptly corrected as soon as the operator became aware of the condition. The inspector simply speculated that the operator was aware of the condition. The Secretary moved to amend the 104(d)(1) order to a 104(a) citation and accordingly modified the \$259.00 proposed penalty to \$150.00. There was no objection to the motion. The motion was granted. Respondent in turn withdrew its notice of contest to the citation and to the proposed penalty as amended.

The Secretary's counsel stated in support of its motion, that on review and preparation for the trial it was found that the negligence was less than "originally believed". Once the operator discovered the violative condition, it immediately took action to correct it. Although the operator admitted the violation, there was no evidence to support the issuance 104(d)(1) citation rather than a 104(a) citation.

#### Conclusion

After careful review and consideration of the pleadings, arguments, and the information placed upon the record at the hearing, I am satisfied that the proposed disposition made at the hearing is reasonable, appropriate and in the public interest. The civil penalties are appropriate under the criteria set forth in section 110(i) of the Mine Act.

DOCKET NO. WEST 88-168

Citation/Order No. 2839897 as modified to a 104(a) citation and the Secretary's original proposed civil penalty of \$400.00 are affirmed.

Citation No. 2839896 and its proposed civil penalty are vacated.

Citation Nos. 2839895 and 2839894 and the Secretary's original proposed civil penalty of \$74.00 for each of these violations are affirmed.

DOCKET NO. WEST 88-193

Citation No. 2839893 as modified to a 104(a) citation and its amended proposed civil penalty of \$150.00 are affirmed.

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ORDER

The respondent, Energy Fuels Coal Inc., is directed to pay the civil penalties in the amounts shown above in satisfaction of the citations and orders in question within 30 days of the date of this decision and order.

August F. Cetti  
Administrative Law Judge