

CCASE:
SOL (MSHA) v. THE PITTSBURG & MIDWAY COAL MINING
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TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
The Federal Building
Room 280, 1244 Speer Buildint
Denver, CO 80204

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

v.

THE PITTSBURG & MIDWAY COAL
MINING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 90-38
A.C. No. 29-00845-03534

York Canyon

DECISION

Appearances: Mary E. Witherow, Esq., Office of the Solicitor,
U.S. Department of Labor, Dallas, Texas,
for Petitioner;
Ray D. Gardner, Esq., Pittsburg & Midway Coal Min-
ing Company, Englewood, Colorado,
for Respondent.

Before: Judge Cetti

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charged Respondent with violating three safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801, et seq. (the "Act").

After notice to the parties, a hearing was held in Pueblo, Colorado, on September 21, 1990. At the hearing, both parties presented oral and documentary evidence on Citation No. 3240566 concerning the alleged improper grounding of a guy wire, and Citation No. 3240567 concerning a drag line trailing cable.

At the hearing, testimony was taken from the following witnesses:

1. MELVIN SHIVELEY, MSHA coal mine inspector,
 2. WILLIAM BECK, electrical supervisor at York Canyon Pittsburg Midway Coal Complex, and
 3. EDWARD BOLTON, Respondent's senior electrical engineer.
- At the end of a full day of hearing, the case had to be continued. Before the matter was reset for further hearing, the parties advised they had reached an amicable settlement of all matters at issue. In the settlement agreement filed March 4, 1991, Petitioner moved to amend Citations 3240567 and 3240566 to delete the "significant and substantial" designation.

~386

The parties stated that Respondent withdrew its Notice of Contest to the violation alleged in Citation 3240565 and its related proposed penalty of \$91.00.

Based upon my review and evaluation of the evidence presented at the hearing, I find the settlement agreement to be reasonable, in the public interest, and consistent with the statutory criteria in Section 110 of the Act. The settlement agreement is approved.

ORDER

1. Citation Nos. 3240566 and 3240567 are MODIFIED to delete the designation "Significant and Substantial" and, as so modified, are AFFIRMED.

2. Citation No. 3240565, alleging a violation of 30 C.F.R. 77.400(a), including its finding that the violation was "Significant and Substantial," is AFFIRMED.

3. Respondent, if it has not previously done so, is ORDERED to pay to the Secretary of Labor within 30 days from the date hereof the sum of \$273.00 as and for a civil penalty for the above Citations. Upon such payment, this proceeding is DISMISSED.

August F. Cetti
Administrative Law Judge