

CCASE:
SOL (MSHA) v. PITTSBURG AND MIDWAY COAL MINING
DDATE:
19910401
TTEXT:

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

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

v.

PITTSBURG AND MIDWAY COAL
MINING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 90-120
A.C. No. 29-00096-03541

McKinley Mine

DECISION

Appearances: Mary Witherow, Esq., Margaret Terry, Esq., Office
of the Solicitor, U.S. Department of Labor, Dallas,
Texas, for Petitioner;

Ray D. Gardner, Esq., John Paul, Esq., The Pitts-
burg & Midway Coal Mining Co., Englewood, Colorado,
for Respondent.

Before: Judge Lasher

This is one of nine dockets which were consolidated for
hearing, eight of which were either fully or partially settled
after commencement of the hearing. The settlements were approved
from the bench on the record.

This docket involves two Section 104(d)(1) ("Unwarrantable
Failure") Withdrawal Orders. The parties, as to Order No.
3414833, agree that the "Unwarrantable Failure" classification
should be deleted and the nature and issuance authority of this
enforcement document changed from a Section 104(d)(1) order to a
Section 104(a) Citation with the "Significant and Substantial"
designation to remain. In view of such modification, the penalty
is to be reduced from \$1,100 to \$371.

As to Order No. 3414834, such is to be affirmed and
Respondent agrees to pay in full MSHA's administrative level
assessment of \$1,100.

The two penalties agreed to and above indicated are here
assessed.

ORDER

1. Withdrawal Order No. 3414833 is MODIFIED to change its nature and issuance authority from a Section 104(d)(1) "Unwarrantable Failure" Order to a Section 104(a) Citation with the "Significant and Substantial" designation to remain.

2. Withdrawal Order No. 3414834 is AFFIRMED.

3. Respondent SHALL PAY to the Secretary of Labor within 30 days from the issuance date of this decision the penalties hereinabove assessed in the total sum of \$1,471.00

Michael A. Lasher, Jr.
Administrative Law Judge