

CCASE:
ROCHESTER & PITTSBURGH COAL v. SOL (MSHA)
DDATE:
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TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

ROCHESTER & PITTSBURGH COAL
COMPANY,

CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket No. PENN 88-284-R
Order No. 2888902; 7/14/88

Docket No. PENN 88-285-R
Order No. 2888903; 7/14/88

Greenwich Collieries No. 2 Mine
Mine ID 36-02404

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

v.

ROCHESTER & PITTSBURGH COAL
COMPANY,

RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. PENN 89-72
A.C. No. 36-02404-03740

Greenwich Collieries
No. 2 Mine

DECISION UPON REMAND

Before: Judge Maurer

These cases are before me upon remand by the Commission to reinstate the two originally issued section 104(d)(2) withdrawal orders that I previously modified to section 104(a) citations and to reconsider an appropriate civil penalty in light of that fact.

In my original decision, reported at 11 FMSHRC 1978 (October 1989) (ALJ), I found as a fact that the required examinations were not made and affirmed the two cited S&S violations of 30 C.F.R. 75.305, but deleted the unwarrantable failure findings based on my holding that the intentional misconduct of the responsible employee, a rank-and-file miner, was not imputable to the mine operator. The Commission has reversed me on that point of law, holding that although he was a rank-and-file miner, he was the agent of the operator for the purpose of conducting the statutorily required examinations. And his failure to accomplish them, even though this was intentional wrongdoing on his part, is imputable to the operator for unwarrantable failure purposes, as well as for negligence findings pertinent to the assessment of civil penalties in these cases.

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Accordingly, considering the entire record made in these cases, including the Commission's Decision of February 5, 1991, and taking into account the requirements of section 110(i) of the Act, I conclude and find that a civil penalty assessment of \$1100 for each of the two violations found herein is appropriate.

ORDER

It is ORDERED that Order Nos. 2888902 and 2888903 (previously modified to 104(a) citations in error) ARE AFFIRMED.

It is further ORDERED that the operator pay \$2200 within 30 days from the date of this decision.

Roy J. Maurer
Administrative Law Judge