

CCASE:
CONSOLIDATION COAL v. SOL (MSHA)
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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

CONSOLIDATION COAL COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. WEVA 90-296-R
Order No. 3314669; 8/1/90

Blacksville No. 1 Mine

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

v.

CONSOLIDATION COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 91-48
A.C. No. 46-01867-03865

Blacksville No. 1 Mine

DECISION

Appearances: Page H. Jackson, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for the Secretary of Labor (Secretary);
Walter J. Scheller, Esq., Pittsburgh, Pennsylvania,
for Consolidation Coal Company (Consol)

Before: Judge Broderick

STATEMENT OF THE CASE

Consol filed a notice of contest challenging a withdrawal order issued under section 104(b) of the Mine Act on July 31, 1990, for failure to abate a citation issued under section 104(a) on the same day. The Secretary seeks a civil penalty for the violation alleged in the citation. The civil penalty docket includes three other citations for which penalties are sought. Prior to the commencement of the hearing in this case, the Secretary moved on the record for approval of a settlement concerning the three violations: Citation 3314062 alleges a violation of 30 C.F.R. 75.1003(c) because of inadequate guarding of a trolley wire. It was assessed at \$355. The parties propose that the significant and substantial finding be deleted, and that the penalty be reduced to \$213; Consol's portal buses have a covered, insulated top, and it is unlikely that the failure to guard the trolley wire would result in injury.

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Citation 3314064 charges a violation of 30 C.F.R. 75.202(a). It was assessed at \$720, and Consol agrees to full payment. Citation 3314072 alleges a violation of 30 C.F.R. 75.1003(c). It was assessed at \$265. The parties propose that the significant and substantial finding be deleted and that the penalty be reduced to \$159.

Pursuant to notice, the cases were consolidated and called for hearing in Morgantown, West Virginia, on April 18, 1991. Raymond Ash and Joseph Migaiolo testified on behalf of the Secretary. John Weber, Wen H. Su, Willis Fansler, and John Morrison testified on behalf of Consol. The record was kept open for possible rebuttal evidence by the Secretary.

On April 23, 1991, the Secretary filed a motion to approve a settlement with respect to the remaining violation and the contest proceeding. Consol agrees to pay in full the proposed penalty of \$828, and the Secretary agrees to a vacation of the section 104(b) withdrawal order. I have considered the motion in the context of the testimony at the hearing, and in the light of the purposes of the Mine Act, and conclude that it should be approved.

Accordingly, IT IS ORDERED:

1. The Notice of Contest in Docket No. WEVA 90-296-R is GRANTED and order of withdrawal 3314669 issued July 31, 1990, is VACATED.

2. Within 30 days of the date of this decision, Consol shall pay to the Secretary of Labor, the following civil penalties:

CITATION	AMOUNT
3314062	\$ 213
3314064	720
3314072	159
3314665	828

TOTAL \$1920

James A. Broderick
Administrative Law Judge