

CCASE:
SOL (MSHA) v. CONSOLIDATION COAL
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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

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

v.

CONSOLIDATION COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 91-30
A. C. No. 46-01436-03825

Shoemaker Mine

DECISION

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

Before: Judge Weisberger

Statement of the Case

This case is before me based on a petition for assessment of civil penalty filed on November 5, 1989, alleging a violation of 30 C.F.R. 75.1403. Subsequent to the filing of an Answer and pursuant to notice, the case was heard in Pittsburgh, Pennsylvania, on February 20-21, 1991. Joseph Yudasz, Louis Paul Jones, Nelson Thomas Blake, Thomas Dale Updegraff, and Dennis O'Neil testified for the Secretary (Petitioner). Edward Roy Pride, II, Michael Blevins and James A. Deems testified for the Operator (Respondent).

Subsequent to the hearing on May 30, 1991, Petitioner filed a Motion to Approve Settlement. In its motion, counsel for Petitioner asserts that the language in the notice to provide safeguard, which provided the basis for the issuance of the citation at issue herein, ". . . may not provide Consol with sufficient notice of what is required to comply with the safeguard under the various mining conditions encountered at the Shoemaker Mine." This assertion is consistent with the evidence that was adduced at the hearing.

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The motion seeks an order vacating the safeguard and citation at issue, and ordering Respondent to issue instruction for safe travel, and conduct a safety meeting concerning these instructions. Based on the record before me, I conclude that such an order fairly disposes of the issues in this case, and is consistent with the purposes of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. Accordingly, the motion is granted.

It is ordered that: (1) Consol shall issue at the Shoemaker Mine, within thirty (30) days of the date of the order, the safe work instruction attached as Exhibit 1; (2) Consol shall conduct a safety meeting, which concerns the contents of the safe work instruction attached as Exhibit 1, with all miners working on the longwall section at the Shoemaker Mine within thirty (30) days of the date of the order; and (3) Notice to provide Safeguard No. 3326026, and section 104(a) Citation No. 3326035 shall be vacated.

Avram Weisberger

Administrative Law Judge

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Exhibit 1

SAFE WORK INSTRUCTION