

CCASE:
ENERGY WEST MINING v. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
The Federal Building
Room 280, 1244 Speer Boulevard
Denver, SO 80204

ENERGY WEST MINING COMPANY,
CONTESTANT

CONTEST PROCEEDING

v.

Docket No. WEST 91-406-R
Order No. 3582410; 5/1/91

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

Deer Creek Mine
Mine I.D. 42-00121

AND

UNITED MINE WORKERS OF AMERICA
(UMWA)

INTERVENOR

DECISION AFTER EXPEDITED HEARING
ORDER MODIFYING CITATION
ORDER DISMISSING CONTEST PROCEEDING

Appearances: Thomas C. Means, Esq., Crowell & Moring,
Washington, DC,
for Contestants;
Robert J. Murphy, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner/Respondent;
Robert L. Jennings, Representative of United Mine
Workers of America, Price, Utah.

Before Judge Cetti:

Pursuant to the request of Respondent, this matter came on for an expedited hearing before me at Grand Junction, Colorado, on May 23, 1991. Documents and testimony from numerous witnesses were introduced and the matter fully litigated by the parties. At the conclusion of the hearing, there was a ruling from the bench on some issues.

The proceeding was initiated by Contestant's filing a Notice of Contest pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(d) challenging the captioned citation issued by MSHA.

After the hearing and receipt of the transcript, the parties filed and requested approval of a proposed settlement agreement. The proposed agreement provides that the 104(d)(1) order be redesignated a section 104(a) citation, that it retain its

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characterization of "significant and substantial" and that the negligence factor be characterized as "moderate" rather than "high". Contestant agrees to withdraw its contest to the enforcement document as amended, with the withdrawal to be effective upon approval of the settlement.

After due consideration of the evidence and arguments presented in support of the proposed settlement of the contest proceeding, I conclude and find that the settlement is reasonable and in the public interest. The motion is GRANTED, and the settlement is APPROVED.

ORDER

Order No. 3582410 is modified to a 104(a) citation with a significant and substantial designation and the characterization of its negligence factor is modified to "moderate". Contestant having agreed to withdraw its contest to the enforcement document as modified by this Order, this proceeding is DISMISSED.

August F. Cetti
Administrative Law Judge