

CCASE:
WEST ELK COAL v. SOL (MSHA)
DDATE:
19910829
TTEXT:

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

WEST ELK COAL COMPANY, INC.,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. WEST 90-365-R
Citation No. 3584095; 8/16/90

Mt. Gunnison No. 1 Mine

Mine I.D. 05-03672

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

v.

WEST ELK COAL COMPANY, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEST 91-131
A.C. No. 05-03672-03595

Mt. Gunnison No. 1 Mine

DECISION
ORDER DISMISSING CONTEST PROCEEDING
ORDER TO PAY

Appearances: Susan J. Eckert, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
David M. Arnolds, Esq., Denver, Colorado,
for Respondent.

Before Judge Cetti:

Statement of the Proceeding

These consolidated proceedings concern a Notice of Contest filed by the Contestant, West Elk Coal Company, Inc. (West Elk), (Footnote 1) pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(d) (the Act), challenging the captioned citation issued by MSHA. The civil penalty proceeding concern proposals for assessments of civil penalties filed by MSHA seeking assessments against Beaver Creek for the alleged violation of 30 C.F.R. 75.316 stated in the above captioned citation and for the alleged violation of 30 C.F.R. 75.1106-3(a) stated in Citation No. 3584147.

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After notice to the parties, the matter came on for hearing on the merits before me at Glenwood Springs, Colorado. The parties introduced oral and documentary evidence and fully litigated both citations. After both sides rested, the Judge from the bench, in open court informed the parties as to his decision based on the record and the evidence presented at the hearing that the alleged violation of 30 C.F.R. 75.1106-3(a) was not S&S. The parties then conferred off the record and advised the court they had reached an amicable settlement agreement concerning both citations.

Citation No. 3584095

Respondent's counsel stated for the record that the reason West Elk contested Citation No. 3584095 was because of the impression West Elk received from the citation that MSHA was seeking to require the operator to receive specific approval from MSHA every time the operator installed a bleeder system. In light of the testimony of Mr. William G. Denning, MSHA's supervisory mining engineer, that such specific MSHA approval is not required as long as the operator complies with the requirements of the mine's ventilation plan, West Elk agreed to withdraw its contest of the citation. West Elk concedes that it mistakenly made cuts in the left barrier that should not have been made. West Elk, therefore, accepts the citation pursuant to the settlement agreement as a Section 104(a) non-S&S violation with a penalty of \$20 as originally proposed by the Petitioner.

Citation No. 3584147

With respect to Citation No. 3584147, the Judge at the conclusion of the hearing advised the parties that the evidence was insufficient to establish the S&S characterization of the alleged violation of 30 C.F.R. 75.1106-3(a). The parties after conferring, informed the court they had reached an amicable settlement and moved for approval of the agreed settlement of the citation as a Section 104(a) non-S&S violation with a \$20 penalty.

The settlement agreement appeared reasonably proper and consistent with the evidence presented at the hearing. The settlement of both citations was approved and the approval of the settlement agreement is hereby affirmed.

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ORDER

1. Citation No. 3584095 is AFFIRMED as a 104(a) non-S&S violation of 30 C.F.R. 75.316 and a civil penalty of \$20 is ASSESSED.

2. Citation No. 3584147 is MODIFIED from a 104(a) S&S to a 104(a) non-S&S violation, and a civil penalty of \$20 is assessed.

3. Contest Proceeding Docket No. WEST 90-365-R is DISMISSED.

4. Respondent is ORDERED TO PAY the approved penalty in the sum of \$40 to the Secretary of Labor within 30 days of this Decision. Upon receipt of such payment the above-captioned civil penalty proceeding is DISMISSED.

August F. Cetti
Administrative Law Judge

Footnote starts here:-

1. Now Mountain Coal Company, successor by merger to West Elk Coal Company, Inc., and Beaver Creek Coal Company.