

CCASE:
SOUTHERN OHIO COAL v. SOL (MSHA)
DDATE:
19920117
TTEXT:

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

SOUTHERN OHIO COAL COMPANY,
CONTESTANT

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

RESPONDENT

CONTEST PROCEEDINGS

Docket No. WEVA 91-1766-R
Citation No. 3105784;
6/19/91

Docket No. WEVA 91-1767-R
Citation No. 3105785;
6/19/91

Docket No. WEVA 91-1768-R
Order No. 3105797; 7/8/91

Docket No. WEVA 91-1769-R
Order No. 3105798; 7/8/91

Docket No. WEVA 91-1771-R
Order No. 3105788; 7/1/91

Martinka No. 1 Mine

Mine ID 46-03805

DECISION

Appearances: Rebecca J. Zuleski, Esq., Furbee, Amos, Webb &
Critchfield, Morgantown, West Virginia, for the
Contestant;
Glenn M. Loos, Esq., Office of the Solicitor,
U. S. Department of Labor, Arlington, Virginia,
for the Respondent.

Before: Judge Maurer

At the hearing in Morgantown, West Virginia, on August 7,
1991, the parties jointly moved to settle these cases and three
other as yet undocketed matters as a package deal.

The Secretary proposes to vacate Citation No. 3105784
because the evidence at trial would not support the fact of
violation. More particularly, the Secretary concedes that the
MSHA inspector who issued the citation failed to measure the gaps
of the switch gear so that there is no accurate measurement of
what the gaps were at the time the citation was issued.

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The contestant, SOCCO, wishes to withdraw its contest of Citation No. 3105785 contained in Docket No. WEVA 91-1767-R and accept whatever penalty is assessed.

SOCCO also wishes to withdraw its contest in Docket No. WEVA 91-1768-R because the Secretary has agreed to delete the "unwarrantability" finding on that section 104(d)(2) Order, effectively transforming it into section 104(a) Citation No. 3105797 with "S&S" special findings. As modified, SOCCO has agreed to accept the citation and pay the civil penalty when it is assessed.

I have been holding the captioned cases up waiting for these assessments to be made by MSHA until now to no avail. Pursuant to a telephone conference call on January 16, 1992, the parties have agreed to handle any potential civil penalty problems related to these contest cases in the civil penalty docket when it is forthcoming, thereby facilitating the disposition of these contests at this time.

The Secretary further proposes to vacate the two section 104(b) Orders involved in this proceeding, Order Nos. 3105788 and 3105798 and as part and parcel of this settlement, Citation No. 3105791 and Order Nos. 3105799 and 3310101, which are as yet undocketed.

Another docket, Docket No. WEVA 91-1770-R, was originally heard at the same time, but has subsequently been severed and stayed, pending the outcome of a section 101(c) Petition for Modification presently under consideration before the Department of Labor.

The basic theme of the settlement package is that the parties have agreed to perform testing on the air gaps on the switch gear and dead blocks in the Martinka Mine to determine exactly what length gap is necessary to make the switch gears safe. Pending the outcome of that testing, SOCCO agrees to establish an interim air gap length between 1/2 and 1 1/2 inches. In the past, MSHA has provided the operator with differing requirements as to air gaps. With the full implementation of this settlement agreement, the technical problems of compliance should be resolved and the interests of mine safety advanced.

I therefore conclude that the proffered settlement is appropriate under the Act and in furtherance of the public interest, and accordingly, will be approved, including the vacation of the undocketed items, although the actual orders with respect to the undocketed citation and orders will have to be deferred until such time as they are docketed and before me for disposition.

ORDER

Based on the above abbreviated findings of fact and conclusions of law, IT IS ORDERED:

1. Citation No. 3105785 IS AFFIRMED.
2. Order No. 3105797 IS MODIFIED to a section 104(a) S&S Citation and AFFIRMED as such.
3. Citation No. 3105784 IS VACATED.
4. Order Nos. 3105788 and 3105798 ARE VACATED.

Roy J. Maurer
Administrative Law Judge