

CCASE:

MSHA V. CONSOLIDATION COAL

CONSOLIDATION COAL V. MSHA

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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 91-1980
Petitioner : A.C. No. 46-01318-04013
v. :
Robinson Run No. 95 Mine
CONSOLIDATION COAL COMPANY, :
Respondent :
CONSOLIDATION COAL COMPANY, : CONTEST PROCEEDINGS
Contestant :
v. : Docket No. WEVA 91-211-R
Citation No. 3105685; 2/7/91
SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Docket No. WEVA 91-212-R
ADMINISTRATION (MSHA), : Citation No. 3105686; 2/7/91
Respondent :
Robinson Run No. 95 Mine
:
Mine ID 46-01318

PARTIAL DECISION

ORDER OF DISMISSAL

ORDER STAYING PROCEEDING

Appearances: Wanda M. Johnson, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia, for
the Petitioner/Respondent;
Walter J. Scheller, Esq., Consolidation Coal
Company, Pittsburgh, Pennsylvania, for the
Respondent/Contestant.

Before: Judge Koutras

Statement of the Proceedings

The captioned civil penalty proceeding concerns proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to the Federal Mine Safety and Health Act of 1977. The petitioner seeks civil penalty assessments for five (5) alleged violations of certain mandatory safety standards found in Part 75, Title 30, Code of Federal Regulations. The case was docketed for hearing in Morgantown, West Virginia, with

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several other civil penalty and contest cases, and two of the citations were consolidated with Contest Docket Nos. WEVA 91-211-R 2 and WEVA 91 212-R, (Citation Nos. 3105685 and 3105686). One Citation (No. 3105328) concerning an alleged violation of the safeguard standard 30 C.F.R. 1403(8)(b), was previously stayed by me by a stay order issued on November 1, 1991. The remaining citations (Nos. 3313225 and 3313227) concern alleged "excessive history" violations and the parties requested that they be stayed pending the Commission's decision in Drummond Coal Co., Inc., 13 FMSHRC 339, and 13 FMSHRC 356 (March 1991), and Zeigler Coal Company, 13 FMSHRC 367 (March 1991).

Settlement

Section 104(a) "S&S" Citation No. 3105685, concerns an alleged violation of 30 C.F.R. 75.807. Section 104(a) "S&S" Citation No. 3105686, concerns an alleged violation of 30 C.F.R. 75.316. They were both initially assessed at \$310 for each alleged violation.

In support of the proposed settlements, petitioner's counsel stated that upon further review of the facts and circumstances which resulted in the issuance of the citations, the inspector now believes that the citations should be modified as non-"S&S" citations due to mitigating circumstances with regard to the question of gravity. Under the circumstances, counsel agreed that a reduction in the initial penalty assessments is warranted, and the respondent agreed to pay civil penalty assessments in the amount of \$186, for each of the citations.

After careful review and consideration of the pleadings and arguments in support of the proposed settlements, including the civil penalty assessment criteria found in section 110(i) of the Act, the settlement dispositions were approved from the bench. My bench decisions are herein reaffirmed.

ORDER

Pursuant to Commission Rule 30, 29 C.F.R. 2700.30, the proposed settlement IS APPROVED. The respondent IS ORDERED to pay a civil penalty assessment of \$186 for citation No. 3105685, and a civil penalty assessment of \$186 for citation NO. 3105686. Payment is to be made to MSHA within thirty (30) days of the date of this partial decision and order, and upon receipt of payment, the petition for assessment of civil penalty for these citations is dismissed. In view of the settlement approval, the companion contest Docket Nos. WEVA 91-211-R and WEVA 91-212-R, ARE DISMISSED.

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IT IS FURTHER ORDERED THAT excessive history Citation Nos. 3313225 and 3313227 (Docket No. WEVA 91-1980) issued on June 10, 1991, alleging violations of 30 C.F.R. 75.1000-3, ARE STAYED.

George A. Koutras
Administrative Law Judge

Distribution:

Walter J. Scheller, Esq., Consolidation Coal Company, 1800
Washington Road, Pittsburgh, PA 15241 (Certified Mail)

Wanda M. Johnson, Esq., Office of the Solicitor, U.S. Department
of Labor, Suite 516, Ballston Towers #3, 4015 Wilson Boulevard,
Arlington, VA 22203 (Certified Mail)

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