

CCASE:
CONSOLIDATION COAL V. MSHA
MSHA V. CONSOLIDATION COAL
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March 24, 1992

CONSOLIDATION COAL COMPANY,	:	CONTEST PROCEEDING
Contestant	:	
	:	Docket No. WEVA 91-228-R
v.	:	Citation No. 3315561; 2/20/91
	:	
	:	Arkwright No. 1 Mine
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Mine ID 46-01452
ADMINISTRATION (MSHA),	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 91-1832
Petitioner	:	A. C. No. 46-01453-03788
	:	
v.	:	Arkwright No. 1 Mine
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

DECISION

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

Before: Judge Merlin

This case is a petition for the assessment of five civil penalties and a notice of contest corresponding to one of the penalties. The contest case was filed by the operator under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(d). The penalty petition was filed by the Secretary of Labor against Consolidation Coal Company under section 110 of the Act, 30 U.S.C. 820. The case came on for hearing on March 10, 1992.

Citation No. 3315928 and Citation No. 3315561

Citation No. 3315928 was issued for a violation of 30 C.F.R. 75.316 because the man door in the stopping was bound and the bottom frame was bent, resulting in the door standing open a couple of inches and air was passing from the track into the fresh air escapeway. The alleged violation was designated by the inspector as significant and substantial.

Citation No. 3315561 was also issued for a violation of 30 C.F.R. 75.316 because the stopping between the track entry and fresh air escapeway on the 11 left section had a « block hole and air was passing from the track entry into the fresh air escapeway. This citation is the subject of a notice of contest case Docket No. WEVA 91-228-R.

The inspector testified first with respect to Citation No. 3315928. He set forth his position regarding the existence of a violation and why it was significant and substantial. The inspector exhibited great confusion over the meaning of significant and substantial. At the conclusion of the inspector's direct testimony the parties advised that they wished to settle this citation on the basis that the significant and substantial designation be deleted and that the penalty be assessed at \$128. The settlement was approved on the record.

At the same time the parties also moved to settle Citation No. 3315561 on the same basis that the significant and substantial designation be deleted. The proposed settlement in this matter was \$94 and it, too, was approved from the bench.

Citation No. 3315933

This citation was issued for an alleged violation of 30 C.F.R. 75.904 because the circuit breaker which provided protection for the main South No. 2 belt drive was not marked for identification. The inspector testified with respect to the existence of a violation and why it was significant and substantial. Once again, the inspector was confused and unclear with respect to significant and substantial. At one point he stated there was no reasonable likelihood of injury. After direct and cross examination, the parties agreed to settle the case on the basis that the significant and substantial designation be deleted and that I set an appropriate penalty amount. The proposed settlement was accepted on the record and I assessed a penalty in accordance with the criteria in Section 110(i) of the Act, in the amount of \$94.

Citation Nos. 3315935 and 3315510

Citation No. 3315935 was issued for a violation of 30 C.F.R. 75.807. The 4160 high voltage transmission cable, which provides power to the main South No. 1 belt drive transformer, was laying on the mine floor and there was considerable head coal and rib sloughage on the cable. Citation No. 3315510 was issued for a violation of 30 C.F.R. 75.1100-2(b) because a distance of 540 feet existed between consecutive fire hose outlets between No. 62 and No. 68 block along the main Butts No. 2 conveyor belts.

Prior to going on the record, the parties agreed to settle these citations on the basis that the significant and substantial designations be deleted for both citations, that a penalty of \$128 be assessed for Citation No. 3315935 and that a penalty of

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\$94 be assessed for Citation No. 3315510. The proposed settlements were approved from the bench.

ORDERS

In light of the foregoing, the recommended settlements are APPROVED and the operator is ORDERED TO PAY the following amounts within 30 days from the date of this decision.

Citation No.	Amount
3315928	\$128.00
3315561	\$ 94.00
3315933	\$ 94.00
3315935	\$128.00
3315510	\$ 94.00
Total	<hr/> \$538.00

Paul Merlin
Chief Administrative Law Judge

Distribution:

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