

CCASE:  
SOUTHERN OHIO COAL V. MSHA  
DDATE:  
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SOUTHERN OHIO COAL COMPANY, : CONTEST PROCEEDING  
Contestant :  
v. : Docket No. WEVA 88-144-R  
: Order No. 2895540; 1/27/88  
SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH : Martinka No. 1 Mine  
ADMINISTRATION (MSHA), :  
Respondent : Mine ID 46-03805  
:  
SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEVA 88-212  
Petitioner : A. C. No. 46-03805-03852  
v. :  
:  
SOUTHERN OHIO COAL COMPANY, : Martinka No. 1 Mine  
:  
Respondent :

DECISION UPON REMAND APPROVING SETTLEMENT  
ORDER OF DISMISSAL

Before: Judge Maurer

The Secretary proposes to vacate Order No. 2895348 because the evidence available at the retrial of this case on remand would not support the fact of violation using the criterion announced by the Commission in Southern Ohio Coal Co., 14 FMSHRC 1 (January 1992). I accept the Secretary's representations in this regard and accordingly, Order No. 2895348 IS VACATED.

The other matter previously included in the civil penalty proceeding was Order No. 2895540, which was modified to a section 104(a) citation and assessed a civil penalty of \$500 by my Decision and Order of October 16, 1989, which can be found at 11 FMSHRC 1992 (October 1989) (ALJ). Counsel of record for respondent assures me that this \$500 has been long ago paid.

~565

That being the case, the captioned contest proceeding is moot and both of the above proceedings are now DISMISSED.

Roy J. Maurer  
Administrative Law Judge

Distribution:

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