

CCASE:
MSHA V. B R D COAL
DDATE:
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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SECRETARY OF LABOR,)	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH)	
ADMINISTRATION (MSHA),)	Master Docket No. 91-1
Petitioner)	Docket No. VA 91-482
v.)	A.C. No. 44-06030-03546D
)	
B R D COAL COMPANY, INC.,)	Mine No. 2
Respondent)	

ORDER OF DISMISSAL

Before: Judge Broderick

On December 17, 1992, the Secretary filed a motion to dismiss this proceeding on the grounds that on August 8, 1991, Respondent B R D Coal Company, Inc., and Billy Ray Dotson, principal of Respondent entered into plea agreements, agreeing to plead guilty to charges of conspiracy to defraud an agency of the United States in connection with the civil violations charged herein. Respondent contracted with Triangle Research to handle its dust sampling program. Triangle's principal and agent admitted falsifying the samples submitted to MSHA and admitted that on numerous occasions they blew air on the filter surfaces of manufactured dust samples. Harry White and Ronald Ellis of Triangle have been convicted of defrauding the government and have been sentenced to prison. Respondent provided Triangle with signed blank dust data cards which were submitted to MSHA with the samples.

On August 7, 1992, Judge Samuel G. Wilson of the Western District of Virginia sentenced B R D Coal Company, Inc. to pay a fine of \$30,000 of which \$15,000 was suspended and to 2 years probation. Billy Ray Dotson was sentenced to pay a fine of \$5,000, to 2 years probation and 2 months home confinement. As part of the plea agreement the Secretary agreed to move to dismiss pending civil penalty proceedings against Respondent for violations of the laws governing the dust sampling program.

I conclude that under the circumstances dismissal of this proceeding effectuates the purposes of the Mine Act.

~2122

Accordingly, this proceeding is DISMISSED.

James A. Broderick
Administrative Law Judge

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