

CCASE:
SOL (MSHA) V. CONSOLIDATION COAL
DDATE:
19930305
TTEXT:

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 93-64
Petitioner : A.C. No. 46-01867-03937
v. :
: Blacksville No. 1
CONSOLIDATION COAL COMPANY, :
Respondent :

SUMMARY DECISION

Before: Judge Merlin

The above captioned case is a petition for the assessment of civil penalties filed by the Secretary of Labor against Consolidation Coal Company pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C.A. 815(d), and section 2700.27 of Commission regulations, 29 C.F.R. 2700.27. The twelve citations which were issued under section 104(a) of the Act, 30 U.S.C.A. 814(a), charge violations of section 50.30-1(g)(3) of the Secretary's regulations, 30 C.F.R.

50.30-1(g)(3), for overreporting of employee hours on th Quarterly Employment and Coal Production Report (MSHA Form 7000-2).

This case involves the same issue as in Consolidation Coal Co., Docket No. WEVA 93-7, wherein the parties filed cross motions for summary decision. 14 FMSHRC (March 4, 1993). In that case, I determined that summary decision was proper under Commission rules, 29 C.F.R. 2700.64(b), since no issue of material fact was in dispute, but rather only the appropriate amount of penalties to be assessed in accordance with statutory criteria. 30 U.S.C.A. 820(i). To date the parties in this case have not filed cross motions. However, since the issues and parties in this case are identical to those in WEVA 93-7 (only different mines are involved) I find that summary decision lies here as well.

In Docket No. WEVA 93-7, the summary decision rejected the Secretary's motion for imposition of a \$500 penalty for each overreporting of employee hours subsequent to my May 24, 1990, decision in Consolidation Coal Co., 12 FMSHRC 1129, but prior to the Commission's June 9, 1992, decision, 14 FMSHRC 956. Instead penalties of \$100 apiece were assessed for such violations. The summary decision in WEVA 93-7 is controlling and therefore, penalties of \$100 each should be assessed for the violations herein.

~409

In light of the foregoing, it is ORDERED that the Secretary's findings of violations for the twelve citations in the subject penalty petition be AFFIRMED.

It is further ORDERED that penalties of \$1,200 be ASSESSED and that the operator PAY such penalties within 30 days from the date of this decision.

Paul Merlin
Chief Administrative Law Judge

Distribution:

Robert S. Wilson, Esq., U.S. Department of Labor, Office of the Solicitor, 4015 Wilson Boulevard, Room 516, Arlington, VA 22203 (Certified Mail)

Daniel E. Rogers, Esq., Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, PA 15241-1421 (Certified Mail)