

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

September 11, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 93-646  
Petitioner : A.C. No. 15-05423-03734  
v. :  
MANALAPAN MINING COMPANY, : Mine No. 1  
Respondent :  
 : Docket No. KENT 93-884  
 : A.C. No. 15-16733-03546  
 :  
 : Mine No. 7

**DECISION ON REMAND**

Before: Judge Weisberger

On August 30, 1996, the Commission issued a decision in these cases in which it, inter alia, reversed my decision (16 FMSHRC 1669 (August 1994)), that Order No. 4238749 was not S & S, and remanded the matter to me "for penalty reassessment" (Docket No. KENT 93-646, et al., 18 FMSHRC \_\_\_\_, slip op. at 9, (August 30, 1996)).<sup>1</sup>

I take cognizance of the Commission recitation of the Secretary's evidence showing the following: two miners were in the mines for four hours without a preshift examination; the miners' equipment included torches; the bolter was energized; there was a possibility of the presence of low oxygen; and that the mine roof had a tendency to fall, and the mine had experienced several roof falls. The Commission also noted as follows: "During idle periods, methane can build up, and other unforeseen hazards can develop." (slip op. supra, at 8). Based on these factors, I find that the gravity of the violation was relatively high. I also reiterate my initial finding that

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<sup>1</sup>Pursuant to the Commission's direction, I hereby correct a clerical oversight with respect to Docket No. KENT 93-882, and indicate that it contained only one Citation i.e., No. 3003352, which was vacated. I thus order that Docket No. KENT 93-882 be dismissed.

Respondent's conduct was more than ordinary negligence (16 FMSHRC supra, at 1703). I thus find that a penalty of \$5,000 is appropriate for the violation cited in this order.

It is ORDERED that, within 30 days of this decision. Respondent shall pay a total civil penalty of \$5,000 for the violation cited in Order No. 4238749, minus any penalty previously paid for this violation.

Avram Weisberger  
Administrative Law Judge

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: A.C. No. 15-16733-03546  
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: Mine No. 7

**AMENDED DECISION**

Before: Judge Weisberger

Due to clerical error, the second paragraph of the decision in these cases issued on September 11, 1996, is amended to read as follows:

I take cognizance of the Commission's recitation of the Secretary's evidence showing the following: two miners were in the mine for four hours without a preshift examination; the miners' equipment included torches; the bolter was energized; there was a possibility of the presence of low oxygen; and that the mine roof had a tendency to fall, and the mine had experienced several roof falls. The Commission also noted as follows: "During idle periods, methane can build up, and other unforeseen hazards can develop." (slip op. supra, at 8). Based on these factors, I find that the gravity of the violation was relatively high. I also reiterate my initial finding that Respondent's conduct was more than ordinary negligence (16 FMSHRC supra, at 1703). I thus find that a penalty of \$5,000 is appropriate for the violation cited in this order.

Avram Weisberger  
Administrative Law Judge

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