

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

February 14, 1997

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 94-1199
Petitioner	:	A.C. No. 15-14959-03561
v.	:	
	:	Docket No. KENT 94-1200
BROKEN HILL MINING COMPANY,	:	A.C. No. 15-14959-03562
Respondent	:	
	:	Docket No. KENT 95-240
	:	A.C. No. 15-14959-03569
	:	
	:	Docket No. KENT 95-310
	:	A.C. No. 15-14959-03570
	:	
	:	Mine No. 3

DECISION

Appearances: Thomas A. Grooms, Esq., U.S. Department of Labor, Office of the Solicitor, Nashville, Tennessee, for the Petitioner;
No appearance for Respondent.

Before: Judge Maurer

STATEMENT OF THE CASE

These proceedings concern proposals for assessment of civil penalty filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 820(a), seeking a total civil penalty assessment of \$26,300 for eight alleged violations of the mandatory safety standards found in 30 C.F.R. Part 75.

The respondent contested the violations and requested a hearing. Pursuant to notice, a hearing was convened in Paintsville, Kentucky, on January 9, 1997, and while the petitioner appeared, the respondent did not. In view of the respondent's failure to appear, the hearing proceeded without them. For reasons discussed later in this decision, respondent is held to be in default, and is deemed to have waived its

opportunity to be further heard in this matter.

ISSUE

The issue presented in these cases is whether the petitioner has established the violations cited, and, if so, the appropriate civil penalty that should be assessed for the violations.

MSHA-S CASE

The petitioner presented oral and documentary evidence on the record at the hearing through the inspectors who issued the citations and orders at bar. Based on all the evidence presented, I conclude and find that the violations have been established, and accordingly, the contested citations/orders are affirmed as issued.

RESPONDENT-S FAILURE TO APPEAR AT THE HEARING

The record in this case indicates that after numerous unsuccessful attempts to contact Mr. Hobart Anderson, the President of Broken Hill Mining Company, by telephone, to set-up a trial date in these matters, a Notice of Hearing dated December 19, 1996, setting these cases down for hearing in Paintsville, Kentucky, on January 9, 1997, was received by respondent on December 23, 1996. A green postal receipt card for certified mail is included in the record of this case.

Mr. Anderson has somewhat of a track record at the Commission for unceremoniously dropping out of participation in these cases short of their conclusion. Relatively recently, on May 3, 1996, the Commission had occasion to dismiss his appeal (direction for review vacated) in Docket No. KENT 94-972 for his failure to file a brief or proffer a reason for his failure to do so. Broken Hill Mining Co., Inc., 18 FMSHRC 679 (1996).

As previously stated above, the hearing proceeded in the respondent's absence after waiting an additional hour beyond the scheduled starting time. The Secretary put in his case and then by counsel, moved that a default judgment be entered against the respondent pursuant to Commission Rule 66(b), 29 C.F.R. ' 2700.66(b),¹ and that the eight citations/orders at bar be affirmed and that the proposed civil penalty of \$26,300 be assessed against the respondent.

¹/ 29 C.F.R. ' 2700.66(b) provides as follows:

Failure to attend hearing. If a party fails to attend a scheduled hearing, the Judge, where appropriate, may find the party in default or dismiss the proceeding without issuing an order to show cause.

Under the circumstances in this record, I conclude and find that the respondent has waived its right to be heard further in this matter and that it is in default, and that the violations, as alleged, have been proven by a preponderance of the evidence, and that it is appropriate to assess the respondent the proposed civil penalty of \$26,300.

ORDER

Respondent is **ORDERED TO PAY** a civil penalty of \$26,300 to MSHA within 30 days of the date of this decision and upon receipt of payment, this matter is **DISMISSED**.

Roy J. Maurer
Administrative Law Judge

Distribution:

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