

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Office of Administrative Law Judges

5203 LEESBURG PIKE SUITE 1000

FALLS CHURCH VA 22041

November 20, 1996

BOBBY JOE HENSLEY, : CONTEST PROCEEDINGS
Individually, and :
DAY BRANCH COAL COMPANY, : Docket No. Cit/Order No.
Contestants : KENT 94-1005-R; 4489701; 6/13/94
v. : KENT 94-1006-R; 4489702; 6/13/94
: KENT 94-1007-R; 4489703; 6/13/94
SECRETARY OF LABOR, : KENT 94-1008-R; 4489704; 6/13/94
MINE SAFETY AND HEALTH : KENT 94-1009-R; 4489705; 6/13/94
ADMINISTRATION (MSHA), : KENT 94-1010-R; 4489706; 6/13/94
Respondent : KENT 94-1011-R; 4489707; 6/13/94
: KENT 94-1012-R; 4489708; 6/13/94
: KENT 94-1013-R; 4489709; 6/13/94
: KENT 95-492-R; 4246556; 3/13/95
:
: Mine No. 9
: Mine I.D. No. 15-16418

DAY BRANCH COAL COMPANY, : CONTEST PROCEEDINGS
Contestant :
v. :
: Docket No. Cit/Order No.
SECRETARY OF LABOR, : KENT 95-147-R; 4246694; 11/7/94
MINE SAFETY AND HEALTH : KENT 95-148-R; 4246695; 11/7/94
ADMINISTRATION (MSHA), : KENT 95-149-R; 4246696; 11/7/94
Respondent : KENT 95-150-R; 4246697; 11/7/94
: KENT 95-151-R; 4246698; 11/7/94
: KENT 95-152-R; 4246699; 11/7/94
: KENT 95-153-R; 4246700; 11/7/94
: KENT 95-154-R; 4246861; 11/7/94
: KENT 95-155-R; 4246862; 11/7/94
: KENT 95-156-R; 4246863; 11/7/94
: KENT 95-157-R; 4246864; 11/7/94
: KENT 95-158-R; 4246865; 11/7/94
: KENT 95-159-R; 4246866; 11/7/94
: KENT 95-160-R; 4246867; 11/7/94
: KENT 95-161-R; 4246868; 11/7/94
: KENT 95-162-R; 4246869; 11/7/94
: KENT 95-163-R; 4246870; 11/7/94
: KENT 95-164-R; 4246871; 11/7/94
: KENT 95-165-R; 4246872; 11/7/94
: KENT 95-166-R; 4247425; 11/7/94
: KENT 95-167-R; 4247426; 11/7/94
: KENT 95-168-R; 4247427; 11/7/94

: KENT 95-169-R; 4247428; 11/7/94
 : KENT 95-170-R; 4247429; 11/7/94
 : KENT 95-171-R; 4247430; 11/7/94
 : KENT 95-172-R; 4247433; 11/7/94
 : KENT 95-173-R; 4247434; 11/7/94
 : KENT 95-174-R; 4247435; 11/7/94
 : KENT 95-175-R; 4247436; 11/7/94
 : KENT 95-176-R; 4247437; 11/7/94
 : KENT 95-177-R; 4247438; 11/7/94
 : KENT 95-178-R; 4247439; 11/7/94
 : KENT 95-179-R; 4247440; 11/7/94

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 : Mine No. 8
 : Mine I.D. No. 15-16439

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 : Docket No. Cit/Order No.
 : KENT 95-180-R; 4246821; 11/10/94
 : KENT 95-181-R; 4246822; 11/10/94
 : KENT 95-182-R; 4246823; 11/10/94
 : KENT 95-183-R; 4246824; 11/10/94
 : KENT 95-184-R; 4246825; 11/10/94

:
 : Mine No. 9
 : Mine I.D. No. 15-16418

BOBBY JOE HENSLEY,
 Contestant

v.

SECRETARY OF LABOR,
 MINE SAFETY AND HEALTH
 ADMINISTRATION (MSHA),
 Respondent

: CONTEST PROCEEDINGS

: Docket No. Cit/Order No.
 : KENT 95-185-R; 4246821; 11/10/94
 : KENT 95-186-R; 4246822; 11/10/94
 : KENT 95-187-R; 4246823; 11/10/94
 : KENT 95-188-R; 4246824; 11/10/94
 : KENT 95-189-R; 4246825; 11/10/94

:
 : Mine No. 9
 : Mine I.D. No. 15-16418

ORDER OF DISMISSAL

Before: Judge Fauver

These are Notices of Contest under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq. The Secretary of Labor has moved for dismissal on the ground that Contestants failed to request a hearing upon receipt of the penalty proposals.

It appears from the record that proposals for assessment of

civil penalties regarding the above citations/orders were made to both Contestants in 1995.¹ No responses were made to the proposals and by operation of the Commission's Procedural Rule 2700.27 (29 C.F.R. § 2700.27), the proposals became final orders of the Commission.

Contestants move for relief from application of Rule 2700.27 on the ground that the operator's counsel did not receive a copy of the proposals. It appears from the pleadings that Contestants were served at their designated address: P.O. Box 204, Cawood, KY 408915, and that the postal receipts for the proposals were received by Contestants and signed for by Betty Cassim.

The Secretary opposes the motion and states that MSHA does not serve operators' counsel with proposals for assessment of civil penalties and the applicable regulation requires service of a proposed penalty on the operator at its designated address.

I find that Contestants have not set forth a sufficient reason for relief from the application of Rule 2700.27.

Accordingly, it is ORDERED that the Motion to Dismiss is GRANTED, and these proceedings are DISMISSED.

William Fauver
Administrative Law Judge

¹The Secretary states in his Reply to Contestants' Response to the Motion to Dismiss that he did not propose assessment of a civil penalty against Joe Hensley individually with regard to Citation No. 4246556 and that Day Branch Coal Company received a proposed penalty of \$50 (A.C. 15-16418-03569). The Secretary further states that he waives his right to proceed against Joe Hensley concerning such citation, "in the interest of facilitating disposal of these cases."

Distribution:

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