

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

July 25, 1995

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 94-369
Petitioner	:	A.C. No. 46-04421-03724 A
v.	:	
	:	Amonate No. 31 or #31
JAMES M. STUTSO, III,	:	
Employed by	:	
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 94-382
Petitioner	:	A.C. No. 46-04421-03726-A
v.	:	
	:	Amonate #31 or #31
JAMES L. BREWSTER,	:	
Employed by	:	
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 94-395
Petitioner	:	A.C. No. 46-04421-03752-A
v.	:	
	:	Amonate #31 or #31
CHARLES R. HENSLEY,	:	
Employed by	:	
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 94-396
Petitioner	:	A.C. No. 46-04421-03727-A
v.	:	
	:	Amonate #31 or #31
CARLOS H. HESS,	:	
Employed by	:	
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

DECISIONS

Appearances: Robert S. Wilson, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for Petitioner;
David J. Hardy, Esq., John Bonham, Esq., Jackson and Kelly, Charleston, West Virginia, for the Respondent Consolidation Coal Company;
J. Timothy Dipiero, Esq., Ditrapano and Jackson, Charleston, West Virginia, for the Respondent James L. Brewster.

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern proposals for assessment of civil penalties filed by the petitioner against the respondents pursuant to section 110(c) of the Federal Mine Safety and Health Act of 1977. The respondents were charged as agents of the corporate mine operator Consolidation Coal Company (Consol) with "knowingly authorizing, ordering, or carrying out" a violation of mandatory safety standard 30 C.F.R. 75.360, as stated in section 104(d)(1) "S&S" Order No. 3727399, issued by an MSHA inspector on March 3, 1993.

The respondents filed timely contests and answers denying the alleged violations and the matters were consolidated for hearing with several other section 110(c) civil penalty cases, and civil penalty cases filed against Consol. The hearing was convened in Beckley, West Virginia, on June 20, 1995.

Discussion

Prior to the taking of any testimony, the parties were afforded an opportunity to address pending motions for summary

decisions and dismissals that were filed by counsel for the respondents. In support of the motions, counsel argued that the individually named respondents should not, as a matter of law, be held responsible for the alleged violations in question. Each of the motions are supported by the sworn affidavits of the respondents who state that they were not on duty on the section during the shifts immediately prior to, or at, the time of the incident of December 29, 1992, that resulted in the issuance of the violation in question.

The petitioner's counsel stated that MSHA has taken the position that it would not oppose the motions for summary decisions, and did not object to the dismissal of the cases (Tr. 18, 20). He also stated that the parties agreed to bear their own litigation costs in these matters (Tr. 20). Counsel Dipiero, speaking on behalf of all of the respondents, confirmed that this was the case, and that the respondents agreed to pay their costs (Tr. 20-22).

Conclusion

After further consideration of the motions and arguments advanced by the respondents, and taking into account the lack of opposition by the petitioner, the motions were granted from the bench (Tr. 20). My decision and ruling in this regard is herein **REAFFIRMED**.

ORDER

In view of the forgoing, the petitioner's proposed civil penalty assessments **ARE DENIED**, and these matters **ARE DISMISSED**.

George A. Koutras
Administrative Law Judge

Distribution:

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

David J. Hardy, Esq., John Bonham, Esq., Jackson & Kelly,
1600 Laidley Tower, P.O. Box 553, Charleston, WV 25322
(Certified Mail)

Docket No. WEVA 94-369

Arden J. Curry II, Esq., 100 Kanawha Boulevard, West,
P.O. Box 2786, Charleston, WV 25330 (Certified Mail)

Docket Nos. WEVA 94-382

J. Timothy Dipiero, Esq., Ditrapano & Jackson, 604 Virginia
Street East, Charleston, WV 25301 (Certified Mail)

Docket Nos. WEVA 94-395, WEVA 94-396

Gregory J. Campbell, Esq., Morrison Building, Suite 200,
815 Quarrier Street, Charleston, WV 25301 (Certified Mail)

/lh