

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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November 18, 1997

STILLWATER MINING COMPANY,	:	CONTEST PROCEEDING
Contestant	:	
	:	Docket No. WEST 96-281-RM
v.	:	Citation No. 7900016; 5/21/96
	:	
SECRETARY OF LABOR,	:	Stillwater Mine
MINE SAFETY AND HEALTH	:	Mine I.D. No. 24-01490
ADMINISTRATION (MSHA),	:	
Respondent	:	
	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 97-179-M
Petitioner	:	A.C. 24-01490-05583
	:	
v.	:	
	:	Stillwater Mine
STILLWATER MINING COMPANY,	:	
Respondent	:	

DECISION

Before: Judge Manning

By order dated November 11, 1997, I granted the Secretary of Labor's motion for summary decision on all issues except the degree of negligence attributable to the violation. In the order, I held that there are no genuine issues as to any material fact in these cases. I also held that the Secretary established a violation of 30 C.F.R. ' 50.11(b) as a matter of law. My order granting, in part, the Secretary's motion for summary decision is attached to and made a part of this decision.

Citation No. 7900016, issued May 21, 1996, alleged that Stillwater Mining Company (AStillwater@) failed to make available to the Mine Safety and Health Administration (AMSHA@) an accident investigation report of the Kenneth Goode fatality. Stillwater made a number of documents available to MSHA, but the Secretary alleged in the citation that these documents did not comply with the requirements of section 50.11(b). The citation alleged that the violation was

not serious and was not of a significant and substantial nature. The citation also alleged that the violation was the result of Stillwater's high negligence. The Secretary proposed a penalty of \$50 for the alleged violation.

In my order of November 11, I held that there were no genuine factual issues in these cases and that the Secretary was entitled to summary decision as a matter of law on the issue of whether Stillwater violated section 50.11(b). I denied the Secretary's motion with respect to her determination that the violation was the result of Stillwater's high negligence. I determined that the Secretary had not established high negligence.

By letter dated November 13, 1997, counsel for the Secretary advised me that the citation will be modified to show that the violation was the result of Stillwater's moderate negligence. With this modification, I hereby find that there are no genuine issues as to any material fact with respect to Stillwater's negligence and that the Secretary is entitled to summary decision on this issue as a matter of law. MSHA advised Stillwater by letter dated May 6, 1996, that it needed to submit its report of the Kenneth Goode fatality to MSHA on or before May 20, 1996. The letter referred to section 50.11 and stated that the regulation requires that the report be complete and contain information listed in the criteria section of 50.11(b).@ (Sec. Ex. A-1). MSHA did not receive a report from Stillwater on or before May 20 and did not receive a request for an extension of time from Stillwater. By letter dated May 23, counsel for Stillwater stated that the requested documents had already been produced in litigation pending before Former Commission Administrative Law Judge Arthur Amchan. Stillwater also provided these documents to MSHA before the end of September 1995.

As stated in my order granting summary decision, the documents previously submitted by Stillwater do not comply with the requirements of section 50.11(b) and cannot be deemed to be a report of Stillwater's accident investigation under that section. Mine operators have been providing accident reports as required by section 50.11(b) for years and Stillwater's failure to provide such a report upon MSHA's request constitutes moderate negligence.

APPROPRIATE CIVIL PENALTY

Section 110(i) of the Federal Mine Safety and Health Act sets out six criteria to be considered in determining an appropriate civil penalty. The Secretary proposed a nominal penalty of \$50.00 for the violation. Given that I have granted the Secretary's motion for summary decision, I have reviewed the six criteria to ensure that there is support for the Secretary's proposed penalty. I find that Stillwater employed about 271 miners underground during the second quarter of 1995 and reported 131,116 man-hours of underground production during that quarter. (Sec. Ex. A-3 at 121). In his decision involving the Kenneth Goode fatality, Judge Amchan determined that Stillwater is a relatively large operator.@ *Stillwater Mining Co.* 18 FMSHRC 1291, 1298 (July 1996). The Secretary did not submit evidence concerning Stillwater's history of previous violations and I assume that the penalty should not be raised or lowered as a result of this criteria. *Id.* The proposed penalty will not affect Stillwater's ability to continue in

business. The violation was not serious and was the result of Stillwater's moderate negligence. The violation was abated in good faith when Stillwater supplemented its response to MSHA's request for a report, as described in my order of November 11. Accordingly, I find that the Secretary's proposed penalty of \$50.00 is supported by the record.

ORDER

The hearing scheduled in these cases is **CANCELED**. Citation No. 7900016 is **AFFIRMED**, as modified to show moderate negligence. The notice of contest filed by Stillwater Mining Company in WEST 96-281-RM is **DISMISSED** and Stillwater Mining Company is **ORDERED TO PAY** the Secretary of Labor the sum of \$50.00 within 40 days of the date of this decision.

Richard W. Manning
Administrative Law Judge

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RWM