

CCASE:
HELVETIA COAL V. MSHA
DDATE:
19790501
TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 1, 1979

HELVETIA COAL COMPANY

v. Docket No. PITT 78-322

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION

ROCHESTER & PITTSBURGH COAL COMPANY

v. Docket No. PITT 78-323

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION
DECISION

Helvetia Coal Company and Rochester & Pittsburgh Coal Company (R&P) seek review of citations issued to them under section 104(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801, et seq. (1978) ["the 1977 Act"]. The citation issued to Helvetia alleged that Helvetia had not complied with the mine safety standard at 30 CFR §50.20 in that an accident report form was not properly completed. The alleged violation was abated by Helvetia "under protest", and the citation was terminated by the Secretary. The citation issued to R & P alleged that, contrary to 30 CFR §75.303(a), the person conducting a pre-shift examination had not placed his initials and the date and time of the inspection in the area of the mine required to have been inspected. The alleged violation was abated by R & P and the citation was terminated by the Secretary. Neither citation contained special findings under sections 104(d) or (4) of the 1977 Act. Administrative Law Judge Merlin dismissed the operators' application for review of the citations on the ground that the citations were not reviewable until after the Secretary

proposed penalties. On October 11, 1978, the Commission granted the operators' petition for review. We reverse and remand.

The issue in these cases is whether an operator served with a citation for a violation that has been abated may immediately contest the allegation of violation in the citation. In *Energy Fuels Corp.*, No. DENV 78-410 (May 1, 1979), we fully examined that question and answered it in the affirmative. We viewed the insertion by a congressional conference committee of the phrase "or citation" into section 105(d) of the 1977 Act to have been most likely intended to permit an operator to immediately contest a citation. We also weighed the interests of the persons and agencies affected by this controversy, and we concluded that a fair

balance between these interests could be struck in favor of permitting an operator to immediately contest citations. Our analysis of the interests of the operator rested partially on the fact that the citation in Energy Fuels contained special findings under section 104(d) of the 1977 Act and thus exposed the operator to a possible withdrawal order before a penalty could be proposed. Although the citations here have no special findings, we do not believe that permitting Helvetia and R & P to immediately register their contests of the citations will unduly burden others. As in Energy Fuels, the miners will not be adversely affected if we permit the operators to immediately contest the citations. The Secretary and the Commission may relieve possible administrative burdens through the techniques we noted in Energy Fuels. Although it is arguably unlikely that these operators will need a hearing before a penalty is proposed (the alleged violations have been abated and the citations containing no special findings), it might nevertheless be desirable for a hearing to be scheduled quickly if, for example, the allegedly violative conditions often recur, if continuing abatement efforts are expensive, or if another case is being heard on the same issue and early consolidation would be beneficial. By permitting operators to immediately contest citations, the Commission retains the ability to examine these matters and to afford a quick hearing if necessary.

Accordingly, the Judge's decisions are reversed. The cases are remanded for further proceedings consistent with this opinion.

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Commissioner Lawson dissenting:

For the reasons stated in my dissenting opinion in Energy Fuels Corp, No. DENV 78-410, I would deny immediate review of all citations for which the alleged violation has been abated.