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PEABODY COAL V. MSHA
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION

WASHINGTON, D.C.
May 2, 1979

PEABODY COAL COMPANY

v. Docket No. VINC 78-386

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION
DECISION

Peabody Coal Company has applied for review of a citation issued 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 alleged that Peabody has violated a mine safety and health standard; it did not contain special findings under sections 104(d) or (e) of the 1977 Act. The alleged violation has been abated. Administrative Law Judge Moore dismissed Peabody's application for review on the ground that the citation was not reviewable until the Secretary proposed a penalty. On October 11, 1978, the Commission granted Peabody's petition for discretionary review.

The issue here 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), and *Helvetia Coal Co.*, No. PITT 78-322 (May 1, 1979), we examined that question and answered it in the affirmative. We accordingly reverse the Judge's decision and remand for further proceedings consistent with those opinions.

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Commissioner Lawson, dissenting:

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.