CCASE:
MSHA V. CO-OP MINING
DDATE:
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TTEXT:
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
April 21, 1980
SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION(MSHA) DOCKET NO. DENV 75-207-P
DENV 76-6-P
v.
IBMA 77-30
CO-OP MINING COMPANY
DECISION
This penalty proceeding arises under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. •801 et seq. (1976)(amended 1977), and involves 15 alleged violations. On March 31, 1977, after a hearing, the administrative law Judge issued his decision findings that 14 of the alleged violations occurred and assessing penalties in the total amount of $2,898. Co-op Mining Company appealed one finding of violation and seven of the penalty assessments. 1/
Co-Op contends the*t the Mining Enforcement and Safety Administration (MESA) did not sustain its burden of proving a violation of 30 CFR •75.603, which was cited in Notice No. 1 TLC. We have thoroughly reviewed the record, and we conclude that the evidence supports the judge's finding of violation.

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1/ On March 8, 1978, this case was pending on aPpeal before the Secretary of Interior's Board of Mine operations Appeals under the 1969 Act. This appeal is before the Commission for disposition under section 301 of the Federal Mine Safety and Health Amendments Act of 1977, 30 U.S.C.A. •961 (1978).

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As to the remaining notices under appeal, Co-Op concedes that the evidence supports a finding of violation in each instance. However, Co-Op argues that the assessment of penalty made by the judge for each violation was erroneous and excessive. Co-Op concedes that the judge may determine de novo the amount of the civil penalty, but argues that the judge is bound by the formulas provided in 30 CFR •100 in assessing any civil penalty. We reject this argument. 30 CFR •100 was applicable only to MESA's Office of Assessments in initially proposing penalties. The authority of an administrative law judge to assess penalties de novo in a penalty proceeding under the 1969 Act

was not governed by the method of computation utilized by MESA's Office of Assessments.

Finally, Co-Op presents no persuasive arguments why the penalties assessed by the judge are excessive. The evidence emphasized by Co-Op in support of its argument was before the judge for his consideration. After a complete review of the record, we find that the judge gave full and fair consideration to all relevant testimony and other evidence of record in considering the six statutory criteria required before assessing penalties. The record supports his determinations and his penalty assessments should not be disturbed. 2/

Accordingly, the judge's decision is affirmed.

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2/ The Commission has declined to disturb penalty amounts assessed by a judge where the record reflects his full consideration of the six statutory criteria. See, e.g., Peabody Coal Co., 1 FMSHRC 1494 (1979); Pittsburgh Coal Co., 1 FMSHRC 1468 (1979); U.S. Steel Corp., 1 FMSHRC 1306 (1979); Kaiser Steel Corp., 1 FMSHRC 984 (1979); Shamrock Coal Co., 1 FMSHRC 799 (1979); Rushton Mining Co., 1 FMSHRC 794 (1979).

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