

CCASE:
MSHA V. CAMBRIA COAL
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
October 7, 1980

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. PITT 76-108-P

CAMBRIA COAL COMPANY IBMA No. 76-121

DECISION

This case involves a strip coal mining company against which penalties were assessed for alleged violations of the 1969 Coal Act. The assessments were made as a result of an inspection conducted in 1975 by the Mining Enforcement and Safety Administration (MESA) of the Department of Interior. The case was heard before an Administrative Law Judge in 1976, following which a written opinion was issued. An appeal was filed by the operator in late 1976 and it was pending before the Board of Mine Operations Appeals at the time that the 1977 Mine Act became effective. Consequently, the case was transferred to this Commission for disposition.^{1/}

The Administrative Law Judge assessed individual penalties for each of 12 violations. In making the assessments, he relied on the tonnage and number of employees of Gulf Resources and Chemical Company, of which the appellant is a wholly owned subsidiary, in considering the appropriateness of the penalties to the size of the business of the operator charged.^{2/}

^{1/} Section 301, Federal Mine Safety and Health Amendments Act of 1977, 30 U.S.C.A. 961 (1978).

2/ Section 109(a)(1) of the 1969 Coal Act provides in pertinent part that..." In determining the amount of the penalty, the Secretary shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the affect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation." (Emphasis added)

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The operator's appeal raises three points:

1. Whether it was proper to consider the size of the parent company in determining penalties to be assessed against a subsidiary;
2. Whether the penalties assessed for Notices 5-2, 5-3, 5-5, 5-6, 5-9, 5-10, 5-12 and 5-15 were so excessive as to constitute an abuse of discretion; and
3. Whether the judge erred in finding the operator in violation of 30 C.F.R. 77.1000 3/ for failure to follow its approved ground control plan when the alleged violation was located on a highwall which the operator did not create.

I

Without determining the propriety of considering the size of the parent company, Gulf Resources and Chemical Company, in assessing the penalties herein, we have considered the size of appellant Cambria Coal Company alone 4/ and reviewed the record evidence in support of the remaining five criteria of 109(a)(1). We find that the penalties assessed were proper in each instance of violation.

II

Based on our further review of the record we conclude that the finding of the Administrative Law Judge that the operator is responsible for the conditions on the highwall which gave rise to the violation of 30 C.F.R. 77.1000 is legally sound and that it is supported by the evidence of record. We find no reversible error.

3/ The regulation at 77.1000 provides:

Section 77.1000 Highwalls, pits and spoil banks; plans.

Each operator shall establish and follow a ground control plan for the safe control of all highwalls, pits and spoil banks to be developed after June 30, 1971 which shall be consistent with prudent engineering design and will insure safe working conditions. The mining methods employed by the operator shall be selected to insure highwall and spoil bank stability.

4/ The evidence of record shows the tonnage of Cambria Coal Company

for the years 1972-1975, as well as the number of employees for the same period. (Government Exhibit One).

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Accordingly, the decision of the Administrative Law Judge is
AFFIRMED in its entirety.

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