

CCASE:  
RIVCO DREDGING V. MSHA  
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FMSHRC-WDC

May 26, 1988

RIVCO DREDGING CORPORATION

|                        |                          |
|------------------------|--------------------------|
| v.                     | Docket Nos. KENT 88-23-R |
|                        | KENT 88-24-R             |
| SECRETARY OF LABOR,    | KENT 88-25-R             |
| MINE SAFETY AND HEALTH | KENT 88-26-R             |
| ADMINISTRATION (MSHA)  | KENT 88-27-R             |

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,  
Commissioners

ORDER

BY THE COMMISSION:

In this contest proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), the Secretary of Labor filed a motion to dismiss the contest proceeding based upon the failure of Rivco Dredging Corporation ("Rivco") to notify the Secretary that it intended to contest the civil penalties subsequently proposed for the contested citations and orders. On April 20, 1988 Commission Administrative Law Judge Roy J. Maurer issued an order of dismissal. Rivco filed a response in opposition to the Secretary's motion, claiming that it believed that its previous contest of the citations and orders was sufficient to place the penalties in issue. However, the response was not received until after the judge entered his dismissal order. Rivco filed a Petition for Discretionary Review alleging, in essence, that it had failed to notify the Secretary of its intent to contest the penalties because it had already filed a timely Notice of Contest relating to these alleged violations, and was unaware that a contest of the civil penalty proposals was also required. On May 25, 1988, the Secretary filed a response to Rivco's Petition for Discretionary Review.

It appears that this operator, acting pro se, acted in good faith but misunderstood the need to object separately to the two different aspects of the same dispute. See 30 U.S.C. § 815(a) (contest of proposed civil penalties). Cf. Old Ben Coal Co., 7 FMSHRC 205 (February 1985). This Commission has recognized that, in cases like this, innocent procedural missteps alone should not operate to deny a party the opportunity to present its objections to citations or

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In the interest of justice, we conclude that Rivco should be given the opportunity to present to the administrative law judge the reasons for its failure to contest the civil penalty proposals and the judge should evaluate its explanation in light of the precedents cited above. The judge should also address the timeliness issue raised by the Secretary in its response to Rivco's petition for discretionary review. Accordingly, we grant the petition for review, vacate the judge's order of dismissal of the contest proceeding, and remand the matter for proceedings consistent with this order.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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Distribution

Gene A. Wilson, President

Rivco Dredging Corporation

P.O. Box 702

Louisa, Kentucky 41230

G. Elaine Smith, Esq.

Office of the Solicitor

U.S. Department of Labor

2002 Richard Jones Road

Suite B-201

Nashville, TN 37215

Dennis Clark, Esq.

Office of the Solicitor

U.S. Department of Labor

4015 Wilson Blvd.

Arlington, VA 22203

Administrative Law Judge Roy Maurer

Federal Mine Safety & Health Review Commission

5203 Leesburg Pike, Suite 1000

Falls Church, Virginia 22041