

CCASE:
SOL (MSHA) V. BROWN SAND CO
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. SE 94-21-M
:
v. :
:
BROWN BROTHERS SAND COMPANY :
:

BEFORE: Jordan, Chairman; Doyle, Holen and Marks, Commissioners

DIRECTION FOR REVIEW AND ORDER

BY: Jordan, Chairman; Doyle and Holen, Commissioners

The petition for discretionary review filed by Brown Brothers Sand Company ("Brown Brothers") is granted on the issue of the method of payment of civil penalties. Briefing pursuant to Commission Procedural Rule 75, 29 C.F.R. 2700.75 (1993), is deemed unnecessary.

This civil penalty proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988) ("Mine Act"), involves nine citations issued against Brown Brothers by the Department of Labor's Mine Safety and Health Administration ("MSHA"). Administrative Law Judge T. Todd Hodgdon upheld eight of the citations and imposed civil penalties on Brown Brothers, pursuant to section 110(i) of the Mine Act, 30 U.S.C. 820(i). 16 FMSHRC 1996 (September 1994)(ALJ).

In his decision, the judge stated:

Brown Brothers Sand Company is ORDERED to pay, by single check or money order for the entire amount, civil penalties in the amount of \$1,036.00 for these violations within 30 days of the date of this decision.

16 FMSHRC at 2007. In a footnote to this order, the judge stated:

It appears that in a previous case heard by me [Brown Brothers Sand Company, 16 FMSHRC 452 (February 1994)], the Respondent paid the assessed penalty in loose coins. (Tr. 13-15.) If, by such actions, Brown Brothers intended to demonstrate its contempt for the Commission, as suggested by the Secretary, it is advised that continued gestures of this nature may well reflect adversely on any consideration of its good faith in future appearances before the Commission.

Id. at 2007 n. 5.

Brown Brothers objects to the judge's requirement that it pay the penalty by single check or money order. We find merit in that objection. The U.S. Code provides that currency and coins "are legal tender for all debts . . . taxes, and dues." 31 U.S.C. 5103 (1988). Neither the Mine Act nor the Secretary's regulations make reference to the manner of payment of civil penalties. See generally 30 U.S.C. 820(j); 30 C.F.R. Part 100. The judge states no basis for his order to require payment of the penalties "by single check or money order." Moreover, we find no basis in the record, the Mine Act or the Secretary's regulations to conclude, as did the judge, that payment of assessed penalties in "loose coins" should reflect adversely on consideration of Brown Brothers' good faith in future appearances before the Commission.

Therefore, we vacate that portion of the judge's decision that requires payment of the penalty "by single check or money order for the entire amount" and footnote 5, in its entirety. We have considered the operator's other assignments of error and, in all other respects, the judge's decision is affirmed..

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner