

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

March 14, 1997

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket Nos. KENT 94-1199
	:	KENT 94-1200
v.	:	KENT 95-240
	:	KENT 95-310
BROKEN HILL MINING COMPANY	:	

BEFORE: Jordan, Chairman; Marks and Riley, Commissioners¹

DIRECTION FOR REVIEW

DECISION

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq. (1994) (AMine Act@). The Secretary of Labor seeks a total civil penalty assessment of \$26,300 against Broken Hill Mining Company (ABroken Hill@) for eight alleged violations of the mandatory safety standards found in 30 C.F.R. Part 75.

On January 9, 1997, a hearing was convened in Paintsville, Kentucky, before Administrative Law Judge Roy Maurer. Representatives of Broken Hill failed to attend the hearing, and the judge proceeded without them.² The Secretary presented evidence on the record regarding the alleged citations.

On February 14, 1997, the judge issued an order finding Broken Hill in default and concluding that the Secretary proved the violations by a preponderance of the evidence. 19 FMSHRC 318, 320 (February 1997)(ALJ). He ordered Broken Hill to pay the proposed civil penalty of \$26,300. For the following reasons, we grant review of the judge's decision sua

¹ Pursuant to section 113(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 823(c), this panel of three Commissioners has been designated to exercise the powers of the Commission.

² A Notice of Hearing dated December 19, 1996 was received by Broken Hill on December 23, 1996, as evidenced by a green postal receipt card for certified mail. 19 FMSHRC at 319.

sponte, pursuant to section 113(d)(2)(B) of the Mine Act, 30 U.S.C ' 823(d)(2)(B), and remand for further analysis.

The judge's decision contains no findings of fact or conclusions of law, as required by Commission Procedural Rule 69(a), 29 C.F.R. ' 2700.69(a). Consequently, we cannot ascertain from the decision which standards the operator allegedly violated, whether any injuries occurred, or whether the penalty assessed is appropriate. The Commission has made clear that A[a] judge must analyze and weigh the relevant testimony of record, make appropriate findings, and explain the reasons for his decision.@ *Mid-Continent Resources, Inc.*, 16 FMSHRC 1218, 1222 (June 1994). *See also L & J Energy Co.*, 18 FMSHRC 118 (February 1996). Similarly, we have held that a judge must make findings of fact on the penalty criteria set forth in section 110(i) of the Mine Act that Anot only provide the operator with the required notice as to the basis upon which it is being assessed a particular penalty, but also provide the Commission and the courts . . . with the necessary foundation upon which to base a determination as to whether the penalties assessed by the judge are appropriate, excessive, or insufficient.@ *Sellersburg Stone Co.*, 5 FMSHRC 287, 292-93 (March 1983), *aff'd*, 736 F.2d 1147 (7th Cir. 1984). Notwithstanding the operator's failure to appear at the hearing, the judge's terse decision fails to comply with this requirement.

Accordingly, we remand this case to the Chief Administrative Law Judge for reassignment³ and entry of appropriate findings of fact and conclusions of law supporting both the liability and penalty determinations.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

³ Judge Maurer has transferred to another agency.

