

CCASE:
KITT ENERGY V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

KITT ENERGY CORPORATION,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. WEVA 83-125-R
Order No. 2115977; 3/24/83

Kitt No. 1 Mine

DECISION ON REMAND

Appearances: Bronius K. Taoras, Esq., Kitt Energy Corp., Meadow Lands,
Pennsylvania, for Contestant;

Howard K. Agran, Esq., Office of the Solicitor, U.S. Department
of Labor, Philadelphia, Pennsylvania, for Respondent.

Before: Judge Fauver

On December 3, 1984, the Commission remanded this case to me
"for further consideration and ruling in view of the arguments
raised by the Secretary before the Commission."

The Secretary, in his Petition for Discretionary Review to
the Commission, sought a ruling modifying my decision so as to
convert the original section 104(d)(2) withdrawal order to a
section 104(d)(1) citation instead of a section 104(a) citation.

For the reasons submitted in the Secretary's Petition, I
believe the Secretary's position is well taken. I find that my
decision should be amended: (1) to convert the original
withdrawal order to a section 104(d)(1) citation and (2) to find
that the violations cited in the modified section 104(d)(1)
citation were "substantial and significant" and unwarrantable
within the meaning of section 104(d) of the Act.

ORDER

WHEREFORE IT IS ORDERED that my decision of October 4, 1984,
is AMENDED as follows:

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1. Conclusion of Law No. 2 is AMENDED, in the last sentence, to change "section 104(a) citation" to read "section 104(d)(1) citation."

2. The order in the decision is AMENDED to read as follows:

"MSHA Order No. 2115977 is MODIFIED to change it from a section 104(d)(2) order into a section 104(d)(1) citation, including a finding that the violations charged were significant and substantial and unwarrantable. As so modified, this citation is AFFIRMED in all respects."

William Fauver
Administrative Law Judge