

CCASE:
WHITE COUNTY V. SOL (MSHA)
DDATE:
19871222
TTEXT:

~2200

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

WHITE COUNTY COAL CORPORATION,
CONTESTANT

CONTEST PROCEEDINGS

v.

Docket No. LAKE 86-58-R
Order No. 2817373; 2/6/86

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

Docket No. LAKE 86-59-R
Order No. 2817375; 2/12/86

Pattiki Mine

DECISION

Before: Judge Melick

These cases are before me upon remand by a majority of the Commission for further proceedings consistent with its decision dated September 30, 1987. On November 30, 1987, the following stipulations were filed with the undersigned:

1. On February 6, 1986, MSHA Inspector Wolfgang Kaak inspected White County Coal Corporation's ("White County") Pattiki Mine. During his inspection, Inspector Kaak discovered that a chalk centerline had been drawn across an area of unsupported roof in a face area. Despite the fact that the Inspector did not observe the violation, he issued a 104(d)(1) order of withdrawal, alleging an unwarrantable violation of 30 C.F.R. 75.200 as follows:

A chalk centerline was observed on the roof of Room #6 running from the last row of permanent supports, roof bolts, inby to the face. This area was and had not been supported when the coal drill operator, (D. Marshall), made the centerline on the roof. The distance from the last row of bolts to the face was 13 ft. Working section I.D. 003A0.

Order No. 2817373. The order was terminated 25 minutes after it was issued, following crew reinstruction on the roof control plan.

~2201

2. On February 12, 1986, Inspector Kaak visited the Pattiki Mine and saw some footprints in an area of unsupported roof. Despite the fact that he did not see anyone walk under unsupported roof, he immediately issued a 104(d)(2) order of withdrawal alleging an unwarrantable violation of 30 C.F.R. 75.200:

Physical evidence, footprints, were observed going through an area of unsupported roof in the X-cut between Entry No. 6 and Entry No. 7 at Curve Y Spad No. 1773. The opening averaged about 10 ft. long by 10 ft. wide. The height average was 6 ft. The area was rockdusted and footprints were clearly visible. Working Section I.D. 002A0.

Order No. 2817375. The order was terminated approximately one hour after it was issued, after the crew was reinstructed on the roof control plan and the area had been permanently supported.

3. On March 7, 1986, White County filed Notices of Contest challenging Order No. 2817373 and Order No. 2817375. The cases were consolidated by the Administrative Law Judge.

4. On April 25, 1986, White County filed a Motion for Summary Decision alleging that Order Nos. 2817373 and 2817375 were invalid because the violations had already been abated when the closure orders were issued and that Section 104(d) closure orders can only be issued for existing practices or conditions actually perceived by an MSHA inspector as required by the Federal Mine Safety and Health Act of 1977 ("the Act"). The Secretary filed a response in opposition to White County's motion.

5. On June 9, 1986, the Administrative Law Judge granted White County's Motion for Summary Decision and modified the orders to Section 104(a) citations.

6. The Administrative Law Judge issued an order dismissing the cases on June 30, 1986, noting that White County did not "dispute either the existence of the violations alleged in these citations or the 'significant and substantial' findings associated therewith".

7. After briefing and oral argument, the Commission issued a decision on September 30, 1987, reversing the Administrative Law Judge's decision as to White County's motion for Summary Decision and vacating

his modification of the Section 104(d) orders to Section 104(a) citations. The Commission remanded the case [to] sic the Administrative Law Judge for further proceedings.

8. Because White County wishes to obtain prompt review of the Commission's September 30, 1987, decision but is unable to do so until a final order is issued in this matter, it has entered into these stipulations to eliminate the less important issues which remain in order to facilitate and expedite such review.

9. White County hereby agrees to withdraw its Notices of Contest to the extent that White County no longer challenges the finding of unwarrantability. White County, despite the Commission's September 30, 1987, decision in this case, continues to contest the 104(d) orders on the grounds that they were based on an investigation of past, already abated, violations instead of an inspection of existing violations as White County contends 104(d)(1) requires.

10. With this limitation of the basis of White County's challenge to the orders, the Commission's resolution of the issues raised by White County's Motion for Summary Decision as to whether a Section 104(d) order can be based on an investigation of a past, already abated, violation instead of an inspection of an existing violation is dispositive of White County's Notices of Contest, and on that basis, it is stipulated that it would be appropriate; that the Administrative Law Judge enter a final order in these cases.

11. No further hearings are necessary in this matter.

The above stipulations are accepted for purposes of these proceedings. The record is sufficient from which it can be inferred that the admitted violations were caused by the "unwarrantable failure" of the mine operator to comply with the cited standards. The Contests herein are accordingly denied and dismissed on the basis of the Commission's decision in these cases rendered September 30, 1987.

Gary Melick
Administrative Law Judge
(703) 756-6261