

CCASE:
BETHENERGY MINE v. SOL (MSHA)
DDATE:
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TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

BETHENERGY MINES, INC.,
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket No. PENN 90-206-R
Citation No. 3099370;
6/15/90

Docket No. PENN 90-207-R
Citation No. 3099371;
6/15/90

Somerset Portal/84 Complex

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

Docket No. PENN 91-52
A.C. No. 36-00958-03847

Mine No. 84

v.

BETHENERGY MINES, INC.,
RESPONDENT
CIVIL PENALTY PROCEEDING

DECISION

Appearances: Edward H. Fitch, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for the Secretary of Labor (Secretary);
R. Henry Moore, Esq., Buchanan Ingersoll,
Pittsburgh, Pennsylvania, for Bethenergy Mines,
Inc. (Bethenergy)

Before: Judge Broderick

The above cases were consolidated because the citations contested in the contest proceedings were included in the citations for which the Secretary seeks penalties in the civil penalty proceeding. Pursuant to notice, the cases were called for hearing on January 29, 1991, in Pittsburgh, Pennsylvania.

The two contested citations, 3099370 and 3099371, charge violations of 30 C.F.R. 75.305 because return aircourses could not be examined in their entirety as a result of roof falls rendering the travelways impassible. At the hearing counsel for the Secretary stated that further examination convinced the Secretary that the cited areas were not return aircourses, and

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therefore there were no violations of the standard as charged. The Secretary moved to vacate the citations and to withdraw the penalty petition with respect to these two citations.

Citation 3092556 charges a violation of 30 C.F.R. 75.316 because co sensors were more than 1200 feet apart on the belt entry in violation of the approved ventilation plan. The violation was designated as significant and substantial. Further investigation disclosed that co sensors were also located in the parallel track entry. The track entry sensor was within 500 feet of either sensor in the belt entry. For these reasons, the Secretary moved to delete the significant and substantial designation and to reduce the penalty from \$275 to \$175 which Bethenergy has agreed to pay.

Based on the representations of counsel and considering the criteria in section 110(i) of the Act, IT IS ORDERED:

1. Citations 3099370 and 3099371 are VACATED. The Notices of Contest filed in Docket Nos. PENN 90-206-R and PENN 90-207-R are GRANTED, and the proceedings are DISMISSED. The penalty petition with respect to these citations is DENIED.

2. Citation 3092556 is MODIFIED to delete the significant and substantial designation and, as modified, is AFFIRMED.

3. Bethenergy shall, within 30 days of the date of this decision pay the sum of \$175 for the violation charged in citation 3092556.

James A. Broderick
Administrative Law Judge