

CCASE:
SOL (MSHA) v. PITTSBURG & MIDWAY COAL
DDATE:
19910401
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
The Federal Building
Room 280 1244 Speer Boulevard
Denver, CO 80204

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

v.

PITTSBURG & MIDWAY COAL
MINING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 90-128
A.C. No. 29-00096-03543

McKinley Mine

DECISION

Appearances: Mary Witherow, Esq., Margaret Terry, Esq., Office
of the Solicitor, U.S. Department of Labor, Dallas,
Texas,
for Petitioner;

Ray D. Gardner, Esq., John Paul, Esq., The Pitts-
burg & Midway Coal Mining Co., Englewood, Colorado,
for Respondent.

Before: Judge Lasher

This is one of nine dockets which were consolidated for
hearing, eight of which were either fully or partially settled
after commencement of the hearing. The settlements were approved
from the bench on the record.

This docket involves three Section 104(d)(1) Withdrawal
Orders. As to Order No. 3413365, the parties agree that the
"Unwarrantable Failure" character of the Order should be deleted
and the nature and issuance authority of this document changed
from a Section 104(d)(1) order to a Section 104(a) Citation with
the "Significant and Substantial" designation to remain. In view
of such modification, the penalty is to be reduced to \$371.

As to Order No. 3413371, such is to be modified from a
Section 104(d)(1) Order to a Section 104(d)(1) Citation and
Respondent agrees to pay MSHA's administrative level of \$1350 in
full.

As to Order No. 3414745, there are no modifications and
Respondent agrees to pay Petitioner MSHA's administrative level
penalty of \$1600 in full.

The three penalties agreed to and above indicated are here
assessed.

ORDER

1. Withdrawal Order No. 3413365 is MODIFIED to change its nature and issuance authority from a Section 104(d)(1) "Unwarrantable Failure" Order to a Section 104(a) Citation with the "Significant and Substantial" designation to remain.

2. Withdrawal Order No. 3413371 is MODIFIED to change its nature from a Section 104(d)(1) Order to a Section 104(d)(1) Citation.

3. Respondent SHALL PAY to the Secretary of Labor within 30 days from the issuance date of this decision the penalties hereinabove assessed in the total sum of \$3321.

Michael A. Lasher, Jr.
Administrative Law Judge