

CCASE:

MSHA V. SHAMROCK COAL

DDATE:

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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.

June 7, 1979

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

Docket Nos. BARB 78-82-P
BARB 78-83-P
BARB 78-84-P
BARB 78-85-P
BARB 78-98-P
BARB 78-99-P

v.

SHAMROCK COAL COMPANY

DECISION

This penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 et seq. (1978) ["the Act"]. On October 30, 1978, Administrative Law Judge Steffey found that Shamrock Coal Company had violated 31 mandatory safety and health standards and assessed civil penalties totaling \$16,673. Shamrock petitioned for discretionary review of several of the findings of violation and penalty assessments. On December 11, 1978, the Commission granted the petition in part. The issues that we directed for review were: (1) whether substantial evidence supports two of the findings of violation; and (2) whether substantial evidence supports the judge's penalty assessments with respect to twenty-one of the violations.

After a thorough review of the record below, the decision of the judge and the arguments of the parties, we conclude that the judge's findings of violation in issue are supported in the record by substantial evidence. Accordingly, we affirm the findings that Shamrock violated the safety standards cited in notices of violation numbered 9 LLL (7-81) and 3 RM (7-3).

Shamrock presents no persuasive reasons why we should overturn the penalty assessments of the judge. Shamrock's argument that the judge cannot make a de novo assessment of penalties, but must follow the criteria for assessment of penalties contained in the 30 CFR Part 100 procedures of the Secretary of Labor's Office of Assessments, is misdirected. Under section 110(i) of the Act, de novo assessment of penalties is within the authority of the Commission and its judges. 1/ Moreover, at the hearing counsel for Shamrock insisted that the judge refrain from consideration of the Secretary's Part 100 proposals. We conclude that the penalty assessments on review are based on the evidence in the record and reflect correct consideration

of the statutory criteria set forth in section 110 of the Act. The penalties are appropriate and will not be disturbed.

1/ Section 110(i) provides:

The Commission shall have authority to assess all civil penalties provided in this Act. In assessing civil penalties, the Commission shall consider the operator's history of

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Accordingly, the judge's decision is affirmed.

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previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this Act, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.