

CCASE:

MSHA V. ITMANN COAL

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

July 16, 1982

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

v.

Docket No. HOPE 76-197-P

IBMA No. 77-58

ITMANN COAL COMPANY

DECISION

This case arose under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 801 et seq. (1976)(amended 1977)("the Coal Act").^{1/} The administrative law judge concluded that Itmann Coal Company committed two violations of section 103(e) of the Coal Act and regulations implementing that section (30 C.F.R. §§ 80.10 and .11 (1975)). The judge assessed a penalty of \$7,500 for each violation. Itmann appealed the judge's decision and argues that in both instances the judge erred in finding violations. In the alternative, Itmann argues that proper application of the gravity and negligence penalty assessment criteria requires penalties "substantially less" than those assessed by the judge.

We have reviewed the judge's decision and the record in this case in view of the arguments presented by Itmann on appeal. Based on our review, we conclude that the judge's findings of two violations of section 103(e) of the Coal Act area supported by the evidence. To the extent that the judge made credibility findings to resolve conflicting testimony, we find no basis for disturbing those findings.

We also find that the judge correctly ruled upon the questions of law raised by the operator. In particular, we agree that the acquittal and dismissal of criminal charges brought against Itmann and several of its employees do not bar the present civil action. The criminal proceedings involved charges that the defendants conspired "to impede the due and proper administration of law" by fabricating a story about the

^{1/} On March 8, 1978, this case was pending on appeal before the Department of Interior's Board of Mine Operations Appeals.

Accordingly, it is before the Commission for disposition. 30 U.S.C. § 961 (Supp. IV 1980). The Mine Safety and Health Administration (MSHA) has been substituted for its predecessor agency, the Mining

Enforcement and Safety Administration (MESA).

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methane ignition at issue and by giving false testimony during the investigation thereof, and that Itmann willfully violated mandatory safety and health standards. The violations of the Coal Act at issue in the instant civil proceeding concern Itmann's failure to properly notify the Secretary of an accident and to prevent the destruction of evidence that would assist in the investigation of the accident.

Apart from the differences in the nature of the allegations at issue in the criminal and civil proceedings, different standards of proof apply, i.e., proof beyond a reasonable doubt and proof by a preponderance of the evidence. Therefore, we agree with the judge that the present civil proceedings are not barred. *United States v. Nat'l Assoc. of Real Estate Bds.*, 339 U.S. 485, 94 L.Ed 1007, 70 S.Ct. 711 (1950).

We also affirm the judge's conclusion that a civil penalty could be assessed for the failure to immediately notify MESA of the ignition. As the Board of Mine Operations Appeals held: "[T]he element of immediacy is to be construed as an integral part of the notification and preservation of evidence obligation of section 103(e) [of the Coal Act]." *U.S. Steel Corp.*, 8 IBMA 230, 236-37 (1977). Therefore, by failing to comply with 30 C.F.R. § 80.11 (1975), Itmann violated section 103(e) of the Coal Act and a penalty must be assessed for this violation. 2/

Finally, based on our review of the record, and in light of the circumstances of this case, we conclude that the penalties assessed by the judge reflect consideration of the statutory penalty criteria, are appropriate for the violations and should not be disturbed. Accordingly, the decision of the administrative law judge is affirmed.

A. E. Lawson,
Commissioner

2/ Thus, we need not decide whether section 80.11 was, in and of itself, a mandatory safety and health standard.

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Distribution

Timothy M. Biddle, Esq.
Crowell & Moring
1100 Connecticut Ave., N.W.
Washington, D.C. 20036
Michael McCord, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, Virginia 22203

Administrative Law Judge William Fauver
Fed. Mine Safety & Health Rev. Commission
5203 Leesburg Pike, 10th Floor
Falls Church, Virginia 22041