

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 15, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket Nos. WEST 2002-207
v.	:	WEST 2002-278
	:	
PLATEAU MINING CORPORATION	:	

BEFORE: Duffy, Chairman; Jordan, Young, and Cohen, Commissioners

ORDER

BY THE COMMISSION:

These civil penalty proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). The Department of Labor’s Mine Safety and Health Administration issued Citation No. 7143395 alleging a violation of 30 C.F.R. § 75.334(b)(1) to Plateau Mining Corporation (“Plateau”). Administrative Law Judge Richard Manning affirmed the citation and assessed a civil penalty of \$25,000 for the violation. 25 FMSHRC 738, 763 (Dec. 2003) (ALJ). Plateau filed a petition for discretionary review, challenging the judge’s determination, which the Commission granted. On review, Commissioners were evenly divided regarding whether Plateau violated section 75.334(b)(1). 28 FMSHRC 501, 510 (Aug. 2006). The effect of the split decision was to allow the judge’s affirmation of Citation No. 7143395 and assessment of penalty to stand. *Id.* (citations omitted).

In *Plateau Mining Corp. v. FMSHRC*, 519 F.3d 1176 (10th Cir. 2008), the Tenth Circuit Court of Appeals reversed the judge’s decision. The court determined that substantial evidence did not support the judge’s finding that Plateau was on notice that its ventilation system was performing inadequately. *Id.* at 1197. On May 9, 2008, the court issued its mandate in this matter, returning the case to the Commission’s jurisdiction.

Accordingly, consistent with the decision of the Tenth Circuit, we hereby vacate Citation No. 7143395 and the penalty assessed by the judge.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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