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MSHA V. RUSHTON MINING
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
July 9, 1979

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

Docket No. PITT 75-399-P

IBMA No. 76-37

v.

RUSHTON MINING COMPANY

DECISION

This appeal was pending before the Interior Department Board of Mine Operations Appeals as of March 8, 1978. Accordingly, it is before the Commission for disposition. Section 301 of the Federal Mine Safety and Health Amendments Act of 1977, 30 U.S.C. §961 (1978).

Administrative Law Judge Sweeney assessed penalties against Rushton Mining Company for five violations of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §901 et seq. (1976) (amended 1977) ("the 1969 Act"). Rushton appealed the judge's decision regarding three of the violations.

The judge found violations of 30 CFR §75.1107-1(b) and 30 CFR §75.1725(a), and assessed penalties of \$200 and \$300, respectively. Rushton does not deny the violations. Rushton asserts, however, that the gravity of the violations does not warrant the penalties assessed. Rushton's arguments do not demonstrate that the judge erred in his conclusions regarding the gravity of the violations. We conclude that the penalties assessed are supported by the evidence and reflect proper consideration of the statutory criteria set forth in section 109(a)(1) of the 1969 Act. The penalties are appropriate and will not be disturbed.

Rushton further argues that the judge's finding of a violation of 30 CFR §75.1105 1/ is not supported by the evidence and must be

reversed. Specifically, Rushton argues that the evidence does not support the judge's conclusion that the pump at issue was a "permanent pump" within the meaning of the cited standard. Neither the 1969 Act nor the standards define the term "permanent pump." In resolving this question in the present case, the judge looked to the purposes of the cited standard

1/ 30 CFR §75.1105 provides:

Underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps shall be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return. Other underground structures installed in a coal mine as the Secretary may prescribe shall be of fireproof construction.

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and the characteristics of the pump involved. The judge's conclusion that the pump is "permanent" within the meaning of the standard is well-reasoned and supported by the evidence.

Accordingly, the judge's decision is affirmed.

Marian Pearlman Nease, Commissioner