

CCASE:

SOL (MSHA) V. R & F COAL

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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

v.

R & F COAL COMPANY,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. LAKE 84-72  
A.C. No. 33-02312-03506

Rice No. 3 Strip

Appearances: F. Benjamin Riek III, Esq., Office of the  
Solicitor, U.S. Department of Labor,  
Cleveland, Ohio, for Petitioner;  
Peter J. Zinaich, Esq., Pettay, Mosser &  
Tabacchi, Cadiz, Ohio, for Respondent.

DECISION

Before: Judge Kennedy

The captioned matter came on for an evidentiary hearing in Cleveland, Ohio on Thursday, April 18, 1985. After both parties rested, the solicitor sought a voluntary nonsuit by moving to withdraw the penalty petition and vacate the challenged citations. The operator demurred unless the solicitor would consent to entry of the trial judge's tentative bench decision as an advisory decision. The solicitor readily consented.

Whereupon the trial judge granted the motion to withdraw and vacate. Thereafter the trial judge delivered for the record his advisory decision finding the violations charged did not, in fact, occur and strongly recommending that for the future the Secretary take action to correct the due process deficiencies noted in MSHA's enforcement of 30 C.F.R. 77.1606(c).

The premises considered, it is ORDERED that the penalty petition be DISMISSED and that the matters entered of record

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at the hearing of April 18, 1985, be, and hereby are, CONFIRMED and ADOPTED as the trial judge's final disposition of this matter.

Joseph B. Kennedy  
Administrative Law Judge