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Comment from none no one, NA

Submitter Information

Name: none no one

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General Comment

In regards to MSHA backdoor method of removing fairness and impartiality to the citation and assessment system, I see that they are proposing to gut the ability of an impartial jurist to modify penalty assessments.

I find it extremely ironic that one of MSHA's proposed methodologies is to require that ALJ's must apply the part 100 penalty criteria and abide by point system; when MSHA itself refuses to do so in negotiations. Currently, MSHA is of the habit to write a citation with high point values, and then, despite negotiating negligence downwards, or reducing likelihood, or severity, maintaining that there will be no reduction in cost, despite the change of points. Or, that a small % change is feasible, but no more. In some cases, the reduction of negligence from high to moderate could be a change of several thousand dollars to a mine operator, but MSHA refuses to alter from the original cost assessment, maintaining instead that they "changed the paper" so they won't change the penalty.

This is already far too reminiscent of the old Rural Sheriff's department tricks, of pulling over out of town tourists, and writing spurious tickets for "muffler too loud", "window tinting too dark", etc., and piling a load of tickets onto the driver. Then, the sheriff will offer the driver the option of 'paying the one, and the others will go away', just to ensure a steady stream of revenue for the department. The only option the driver has is to appeal to a county judge, and hope the judge agrees that the tickets were badly written and unenforceable. MSHA loads up the case, however, with high negligence, repeated violations, and patterns of actions before the judge can

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see the case, just to make sure.

If MSHA is allowed to bind the ALJ's hands, then MSHA will own the entire process, from ticket to docket, and payment as well. They can issue spurious tickets, elevated enforcements, and the local judge will have ZERO authority to change anything.

Judges, mine operators, and the legal system NEED an impartial arbitrator. One agency cannot be the legislative branch, executive branch, AND the judiciary. That flies directly against the triumvate system our founding fathers imagined. This action by MSHA is nothing more than a power grab, and they need to be told NO, in no uncertain terms, that they cannot control everything.

Leave the system alone: the ability of an impartial judge to alter (reduce or increase) the penalty amounts creates a risk approach for BOTH sides to contesting a citation. If the agency believes that there is no risk to entering contestment, because the judges hands are bound, then they have little incentive to write better citations. If the operators have no chance of reducing citation costs through judgements, they will seek alternate methods, involving federal courts outside the ALJ system, through suit to the agency. At the time, a company can (with some luck) manage a court-like trial system without lawyers. If the process is pushed outside the ALJ system, the only people to become happy will be lawyers on both sides, and costs will quadruple for all.