

CCASE:
SOL (MSHA) V. CONSOLIDATION COAL
DDATE:
19790430
TTEXT:

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. HOPE 78-433-P
A/O No. 46-01412-02002F

v.

No. 7 Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

AND

ORDERING PAYMENT OF CIVIL PENALTY

Appearances: Robert S. Bass, Esq., Office of the Solicitor,
Department of Labor, for Petitioner;
Karl T. Skrypak, Esq., Consolidation Coal Company,
Pittsburgh, Pennsylvania, for Respondent.

Before: Judge Cook

The Mine Safety and Health Administration (MSHA) filed a petition for assessment of civil penalty pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (Act) in the above-captioned proceeding. Subsequent thereto, the proceeding was set for hearing. At the time of the hearing, counsel for both parties proposed a settlement concerning the penalty assessment to be paid by Respondent as to the alleged violations involved.

During the hearing, counsel for MSHA explained the basis for the settlement and stated that he would file a motion for approval of the settlement which would embody such explanation.

MSHA filed motions requesting approval of a settlement and for dismissal of the proceeding. The last motion, filed on April 9, 1979, provided, in part, as follows:

The Secretary moves to withdraw Notice No. 6-0021, dated July 6, 1976, and the assessed penalty of \$10,000 therefor. In support of this motion the Secretary states:

1. That Notice No. 6-0021 citing a violation of 30 CFR 75.200 was issued in error as the result of observations

made by the inspector after a roof fall on July 6, 1976. As a result of a thorough inspection on the following day, July 7, 1976, inspector Filipek determined that Respondent was not removing the last pushout at the time of the roof fall and therefore was not in violation of Drawing No. 8 of its roof control plan governing extraction of twin pushouts.

With respect to Notice No. 6-0022, citing a violation of 30 CFR 75.201, dated July 6, 1976, with an assessed penalty of \$160, the Secretary and Respondent moved to have the following settlement approved:

1. Respondent has agreed to pay a penalty of \$1350. At any hearing into the alleged violation of 30 CFR 75.201, there would be conflicting testimony as to the danger presented to the miners by Respondent's pillar recovery methods. There would be conflicting testimony as to whether or not the operator was following his established pillar recovery plan, and whether or not following that plan would have resulted in a sufficiently supported roof which would have prevented the roof fall which did occur on July 6, 1976.
2. In the opinion of the Secretary a violation of 30 CFR 75.201 existed, and gravity and negligence were greater than first evaluated. At any hearing, the Secretary would have put on evidence in an attempt to persuade the administrative law judge that the assessed penalty was unreasonably low. It is the parties' belief and conviction that approval of this settlement is in the public interest and will further the intent and purpose of the Federal Mine Safety and Health Act of 1977.
3. In view of the Secretary's withdrawal of 30 CFR 75.200, Respondent agrees that the Secretary could have reason for requesting a greater penalty than assessed for Notice No. 6-0022.
4. Respondent did demonstrate good faith in attempting to achieve rapid compliance.

This information, along with the information provided as to the statutory criteria contained in section 110 of the 1977 Act which is attached to the first motion filed, has provided a full disclosure of the nature of the settlement and the basis for the original determinations. Thus, the parties have complied with the intent of the law that settlements be a matter of public record.

In view of the reasons given above by counsel for MSHA for the proposed settlement, and in view of the disclosure as to the elements

~288

constituting the foundation for the statutory criteria, it appears that a disposition approving the settlement will adequately protect the public interest.

ORDER

Accordingly, IT IS ORDERED that the proposed settlement, as outlined above, be, and it hereby is, APPROVED.

IT IS FURTHER ORDERED that the motion of Petitioner to withdraw the petition as relates to Notice No. 6-0021, July 6, 1976, be, and it hereby is, GRANTED.

IT IS FURTHER ORDERED that Respondent, within 30 days of the date of this decision, pay the agreed-upon penalty of \$1,350 assessed in this proceeding.

John F. Cook
Administrative Law Judge