

CCASE:
SOL (MSHA) V. SUE-JAN 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. BARB 79-117-P
A/O No. 15-08104-03003

v.

No. 1 Mine

SUE-JAN COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

AND

ORDERING PAYMENT OF CIVILPENALTY

Appearances: David F. Barbour, Esq., Office of the Solicitor,
Department of Labor, for Petitioner;
Jack McPeck, Sue-Jan Coal Company, St. Charles, Kentucky,
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. An answer was filed and a notice of hearing was issued. Subsequent thereto, MSHA filed a motion requesting approval of a settlement and for dismissal of the proceeding.

MSHA's motion stated, in part, as follows:

Section 104(a) Citation No. 396847, 7/18/78, 30 CFR
75.523 originally assessed at \$90.00 to be settled for
\$30.00

Gravity and Negligence

The inspector found the panic bar on the Galis 300 roof bolter to be broken and inoperative. This was a serious violation because in the event of a miner being caught between the rib and the energized machine the roof bolter could not be instantly stopped. The inability to use the panic bar thus created the possibility of serious injury or death (see Exhibit A).

Sue-Jan Coal Company (Sue-Jan) should have known of this violation. The broken panic bar was visually obvious and its condition should have been observed and corrected during the required electrical inspection (see Exhibit A). It was not. Failure to repair the panic bar was the result of Sue-Jan's ordinary negligence.

Good Faith

Sue-Jan exhibited its good faith in attempting to rapidly abate the violation by repairing the panic bar within the time set by the inspector.

Size

At the time the violation was written Sue-Jan was a small company. It operated only the No. 1 Mine. That mine employed approximately 13 miners and produced approximately 300 tons of coal per day during one production shift (see Exhibit B). During the last full year prior to the subject violation its total production was only 7,602 tons of coal (see Exhibit C, page 1).

Previous History

Sue-Jan had no history of previous violations (see Exhibit C, page 2).

Settlement Amount

The settlement represents a substantial reduction in the proposed penalty. However, MSHA believes that reduction is full [sic] justified by the small size of the operator, by its lack of a prior history of violations and by following mitigating circumstances.

1. Sue-Jan is no longer in business. The company ceased operation during November 1978. MSHA inspector Larry Cunningham (MSHA's Madisonville Kentucky Office) has confirmed this.
2. Sue-Jan leased the No. 1 Mine. That lease was terminated in November 1978. The company has no other leases and plans to acquire none.
3. The company has two stockholders, Jack McPeck and Dwight Rogers. Neither, they nor the company intend to resume mining activity.

4. Mr. McPeek claims the company's liabilities exceed its assets. He has agreed to pay the settlement amount from his personal resources.

This information, along with the information as to the statutory criteria referred to above, has provided a full disclosure of the nature of the settlement and the basis for the original determination. Thus, the parties have complied with the intent of the law that settlement 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 constituting the foundation for the statutory criteria, it appears that a disposition approving the settlement will adequately protect the public interest.

Of major significance, are the factors:

1. That Sue-Jan had no history of prior violations.
2. That Sue-Jan was a small company which is no longer in business.
3. That a co-owner of the former coal mine operator claims that the company's liabilities exceeded its assets and such co-owner has agreed to pay the settlement from his personal resources.

ORDER

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

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

John F. Cook
Administrative Law Judge