

CCASE:
SOL (MSHA) V. C F & I STEEL
DDATE:
19790418
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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 Proceedings

Docket No. DENV 78-362-P
A.O. No. 05-00296-02008

v.

Allen Mine

C F & I STEEL CORPORATION,
RESPONDENT

Docket No. DENV 78-363-P
A.O. No. 05-02820-02008

Maxwell Mine

Docket No. DENV 78-369-P
A.O. No. 05-02820-02010

Maxwell Mine

DECISION

On March 14, 1979, the Mine Safety and Health Administration moved the Judge to approve a settlement to which the parties had agreed and dismiss the above-captioned.

The alleged violations and proposed settlements are as follows:

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Citation or Order Number	Date	30 CFR Standard	Assessment	Settlement
1 DLJ	01/22/74	75.510	\$42	\$42
3 WWT	03/30/74	75.510	42	42
1 CET	07/12/77	75.509	135	0
1 CET	07/13/77	75.400	102	0

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7-0003A/				
1 DLJ	04/07/77	77.1901(d)	190	75
7-0003B/				
1 DLJ	04/07/77	77.1911	130	0

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7-0003C/ 1 DLJ	04/07/77	77.1914	125	75
7-0024C/ 1 EM	06/08/77	77.205(b)	145	0
7-0024A/ 1 EM	06/08/77	77.202	250	125
7-0024B/ 1 EM	06/08/77	77.512	180	90
7-0047/ 1 LAR	08/01/77	75.200	86	86
7-0059/ 4 CET	08/08/77	75.1712-6(a)	36	0
7-0060/ 5 CET	08/08/77	75.509	52	0
7-0066/ 6 CET	08/09/77	75.509	52	0
7-0067/ 7 CET	08/09/77	75.316	67	0

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7-0020/ 4 EM	06/07/77	77.516	67	67
7-0080/ 2 AD	10/19/77	77.1109(d)	49	49

As grounds to support the proposed settlement, MSHA avers as follows:

I. DENV 78-362-P

104(b) Notices 1 DLJ, January 22, 1974 and 3 WWT, March 30, 1974, alleging violations of 30 CFR 70.510 were previously assessed at \$42.00 each in Case No. 3724-0. The assessed amount was paid by Respondent November 14, 1975. Counsel for MSHA therefore moves that these two citations be dismissed.

104(b) Notice 1 CET, July 12, 1977, 30 CFR 75.509 and 104(b) Notice 1 CET, July 13, 1977, 30 CFR 75.400 were issued by Federal Coal Mine Inspector Carl E. Thompson Jr. Inspector Thompson is now deceased, and as MESA's sole witness in establishing a prima facie case as to all elements of the violation, MSHA moves that the two notices of violation be dismissed.

II. DENV 78-363-P

1. 104(a) Order 1 DLJ April 7, 1977 30 CFR 77.1901(d)

The standard cited requires that "no work shall be performed in any slope or shaft, . . . if the methane content

in such slope or shaft is 1.0 volume percentum, or more of methane." Testimony in the review proceeding by witness for C F & I was that work was stopped as soon as the warning light on the continuous mining machine appeared. MSHA's witness testified that when he entered the area, coal was being cut. As a result of the conflicting and inconclusive testimony as to the exact time mining operations ceased when methane was detected, the parties have agreed to a settlement in the amount of \$75.00. The originally assessed amount was \$190.00.

2. 104(a) Order 1 DLJ April 7, 1977, 30 CFR 77.1911(3)

In the above referenced decision the Judge specifically found that the Inspector's testimony failed to establish the recirculating of the air as alleged. As a result of the testimony in the subsequent decision, MSHA moves that the alleged violation of 30 CFR 77.1911(c) be dismissed.

3. 104(a) Order 1 DLJ April 7, 1977, 30 CFR 77.1914

This order was also the subject of the above referenced review proceeding in which the Judge found that the auxiliary fan and the power center, the most important peices [sic] of equipment, were outby the fork or collar of the slope and were not subject to the standards cited. As a result of the diminution in gravity, the parties agreed to a settlement in the amount of \$75.00. The original assessment was in the amount of \$125.00.

4. 104(a) Order 1 EM June 8, 1977, 30 CFR 77.205(b)

This order was the subject of an application for review in which the decision was issued February 8, 1979, by Administrative Law Judge Charles C. Moore, Jr., in which the imminent danger order was vacated. This violation requires that travelways be kept clear of extraneous material or other slipping hazards. The record in the review proceeding clearly indicates that travelway was in the process of being shovelled clean of the wet, muddy material which had spilled. Since the travelway was already in the process of being maintained when the violation was cited, MSHA moves the Administrative Law Judge to dismiss the violation of 30 CFR 77.205(b).

5. 104(a) Order 1 EM June 8, 1977, 30 CFR 77.202

While this violation was not directly litigated in the review proceeding, the record there indicates that the entire area was wet and muddy; and that the conditions

present would significantly reduce any potential for fire or explosion. At a hearing. [sic] Respondent would contend that the accumulations cited would have been cleaned up by the travelway shoveller had time been given. As a result of the potential conflict in testimony and the condition observed, the parties agreed to a settlement in the amount of \$125.00. The original assessment was in the amount of \$250.00.

6. 104(a) Order 1 EM June 8, 1977, 30 CFR 77.512

This condition was in the same area cited above, and as a result of the wet and muddy conditions any possible resulting hazards would be significantly decreased. On this basis the parties agreed to a settlement in the amount of \$90.00. The original assessment was in the amount of \$180.00.

7. 104(b) Notice 1 LAR August 1, 1977, 30 CFR 75.200

This violation was assessed at \$86.00. After consideration of the gravity and negligence involved, MSHA concludes that payment in the full amount of \$86.00 is warranted.

8. 104(b) Notice 4 CET August 8, 1977, 30 CFR 75.1712-6(a)

9. 104(b) Notice 5 CET August 8, 1977, 30 CFR 75.509

10. 104(b) Notice 6 CET August 9, 1977, 30 CFR 75.509

11. 104(b) Notice 7 CET August 9, 1977, 30 CFR 75.316

These four notices of violation were issued by Federal Coal Mine Inspector Carl E. Thompson who is now deceased. As a result, since Inspector Thompson was MSHA's sole witness. [sic] MSHA is unable to present a prima facie case as to each of the elements involved and moves the Administrative Law Judge to dismiss each of the four notices of violation.

III. DENV 78-369-P

1. 104(b) Notice 4 EM June 7, 1977, 30 CFR 77.516

2. 104(b) Notice 2 AD October 19, 1977, 30 CFR 77.1109(d)

These two notices of violation were initially assessed at \$67.00 and \$49.00 respectively. After a consideration of

the facts, particularly as to gravity and negligence, MSHA believes that payment in full is warranted as a proper settlement in each instance. MSHA therefore moves the Administrative Law Judge to dismiss these violations on the basis of full payment.

The above grounds adequately explain the rationale of the Solicitor in his disposition of the above. I hereby APPROVE the settlement to which the parties agreed.

As section 110(a) makes penalties mandatory for violations, and as MSHA avers that it cannot establish certain of the alleged violations, those that cannot be established, must be vacated.

WHEREFORE Notice Nos. 1 CET, July 12, 1977; 1 CET, July 13, 1977; 4 CET, August 8, 1977; 5 CET, August 8, 1977; 6 CET, August 9, 1977; and 7 CET, August 9, 1977; and Order Nos. 1 DLJ, April 4, 1977; and 1 EM, June 8, 1977, are hereby VACATED.

Pursuant to the motion, the above-captioned are DISMISSED.

The hearings that were scheduled for Wednesday and Thursday, March 21 and 22, 1979, in Pueblo, Colorado, were VACATED.

Malcolm P. Littlefield
Administrative Law Judge