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SOL (MSHA) V. SEWELL COAL
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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

v.

SEWELL COAL COMPANY,
RESPONDENT

Civil Penalty Proceedings

Docket No. HOPE 78-619-P
A.O. No. 46-03859-02033V

Docket No. HOPE 78-620-P
A.O. No. 46-03859-02034V

Sewell No. 1-A Mine

Docket No. HOPE 78-516-P
A.O. No. 46-03467-02040V

Docket No. HOPE 78-661-P
A.O. No. 46-03467-02068V

Docket No. HOPE 79-202-P
A.O. No. 46-03467-03008

Meadow River No. 1 Mine

Docket No. HOPE 78-662-P
A.O. No. 46-01477-02075V

Docket No. HOPE 78-680-P
A.O. No. 46-01477-02073

Docket No. HOPE 79-203-P
A.O. No. 46-01477-02020V

Sewell No. 4 Mine

DECISION AND ORDER APPROVING SETTLEMENT

The captioned penalty enforcement proceedings were assigned to the Presiding Judge in February and March 1979. Notices of hearing and pretrial orders were issued between February 28 and March 27, 1979. On April 18, 1979, the Secretary filed a motion to approve settlement of all 44 violations in the amount of \$115,000.00. In support thereof, the Secretary showed the following:

1. Within 30 days of approval, respondent will pay one hundred and fifteen thousand dollars (\$115,000.00) in settlement of the violations -- the amounts to be allocated among the individual violations at the discretion of the Presiding Judge.

2. The Office of Assessments has, at the request of counsel for the Secretary, had a Committee of Assessment Specialists review all of the violations. As a result of that review the Committee has determined that payment of \$115,000.00 in penalties is a reasonable and appropriate resolution in this instance of all of the violations charged.(FOOTNOTE 1)

3. None of the violations involved in these charges actually resulted in death or disabling injuries to any miner, and, in fact, no injuries were sustained by any miner as a result of any of these violations.

4. The vice-president of Sewell Coal Division of the Pittston Coal Group(FOOTNOTE 2) has provided a letter stating these matters were brought to his personal attention, that they are a subject of continuing concern, and that he has instructed his safety director to take necessary steps to minimize delays in taking remedial action especially on unsafe roof conditions and accumulations of combustibles, including where necessary disciplinary action against supervisory personnel.

5. The settlement provides for an average penalty of over thirty-five hundred dollars (\$3,500) for each of the 32 unwarrantable failure violations.

6. Of the 12 citations, one originally assessed at \$240.00 (No. 7-0309) has been withdrawn for the reasons stated. The other 11 were issued during the coal strike of 1977-1978. The amounts assessed totalled \$1,316.00. The Secretary states the gravity and negligence involved in these violations was considered minor because very few employees were available to observe or correct the conditions or to be exposed to the hazards created.

7. With respect to the fourteen (14) violations originally assessed at ten thousand dollars (\$10,000.00) the Secretary concluded that "some of these were over assessed". In addition it is urged that with respect to several of these violations "the inspectors' failure to keep detailed notes on their inspections could cause the Secretary evidentiary problems should each violation be the subject of an adversary evidentiary hearing."

8. The Secretary urges I consider "substantial reductions" from the proposed penalties for the two roof control violations cited in Orders Nos. 7-159 and 7-161 in Docket No. HOPE 78-620-P. As the Secretary notes: "The physical evidence to establish that violations of 75.200 occurred would probably necessitate reliance on circumstantial evidence and opinion, in that, if in fact any timbers had been set in the fall area, they were covered by falls themselves and direct observation was impossible."

Based on the presiding Judge's independent evaluation and de novo review of the circumstances, (FOOTNOTE 3) including the gravity and negligence indicated, as well as the other statutory criteria, I find the amount proposed for settlement should be allocated as set forth in Exhibit A, Schedule of Penalties.

The premises considered, I conclude the total amount proposed for settlement as allocated is in the public interest and in furtherance of the purposes and policy of the Act because of (1) the factors recited in the parties' motion; (2) the fact that my evaluation indicated it is unrealistic to expect litigation would result in any substantial increase in any of the settlement amounts; (3) the absence of any assurance that forcing these matters to trial would be more productive in terms of voluntary

~278

long-run compliance than prompt approval of the penalties proposed. In this connection, I find it significant that the operator has undertaken to institute disciplinary action against errant supervisors for non-compliance with the roof control and combustible accumulations standards.

Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay the agreed upon penalty of \$115,000.00 on or before Wednesday, May 30, 1979, and that, subject to payment, the captioned petitions be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge

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FOOTNOTES START HERE

~FOOTNOTE-ONE

1. The record shows the amount originally assessed by the Assessment Office was \$213,056.00. The amount now approved for settlement is approximately 54% of the amount initially proposed.

~FOOTNOTE-TWO

2. The Pittston Company, owner of Sewell Coal Company, is one of the largest coal producers in the United States.

~FOOTNOTE-THREE

3. Counsel for the parties are to be commended for the cooperation furnished the Presiding Judge in making this evaluation. I wish to commend also my law clerks for their prompt, dedicated and perceptive responses to my demands for development of facts necessary to enable me to make the overall evaluation and detailed review of each violation deemed necessary to ensure compliance with the Congressional mandate. As a result of the hard work and cooperation of all concerned, the Presiding Judge has been able to dispose of 107 violations paid or withdrawn since April 5, 1979.

EXHIBIT A
SCHEDULE OF PENALTIES

DOCKET	ORDER/CITATION	STANDARD	GRAVITY	NEGLIGENCE	AMOUNT
78-619	7-0158	75.200	Serious	High degree of ordinary negligence	\$2000
78-620	7-159	75.200	Serious	High degree of ordinary negligence	\$1000 (See 8 supra)
	7-161	75.200	Serious	High degree of ordinary negligence	\$1000 (See 8 supra)
	7-164	75.200	Serious	High degree of ordinary negligence	\$2000
79-202	7-0309	75.1101-10	---	---	Withdrawn
78-516	7-25	75.200	Serious	High degree of ordinary negligence	\$3000
	7-43	75.200	Serious	High degree of ordinary negligence	\$2000
78-661	7-0354	75.400	Extremely serious	Gross negligence	\$7000
	7-0423	75.400	Serious	High degree of ordinary negligence	\$3000
	7-0455	75.1403-6 (b)(3)	Serious	High degree of ordinary negligence	\$3000
	7-0457	75.1403-6 (b)(3)	Serious	High degree of ordinary negligence	\$3000
	7-0482	75.1725 (a)	Non-serious	High degree of ordinary negligence	\$1000

~280

	7-0483	75.200	Extremely serious	Gross negligence	\$9000
78-662	7-0262	75.200	Extremely serious	Gross negligence	\$5000(See 4 supra)
	7-0270	75.200	Extremely serious	Gross negligence	\$5000(See 4 supra)
	7-0306	75.200	Serious	Ordinary negligence	\$1000(See 7 supra)
	7-0338	75.200	Extremely serious	Gross negligence	\$6000(See 4 supra)
	7-0343	75.200	Non-serious	Minimal negligence	\$ 500(See 7 supra)
	7-0344	75.200	Non-serious	Minimal negligence	\$ 260(See 7 supra)
	7-0369	75.200	Very serious	Ordinary negligence	\$3500(See 7 supra)
	7-0431	75.400	Very serious	Gross negligence	\$3000(See 4 supra)
	7-0466	75.200	Extremely serious	Gross negligence	\$10000(See 4 supra)
	7-0552	75.400	Extremely serious	Gross negligence	\$6000(See 4 supra)
	7-0524	75.1722(a)	Very serious	Gross negligence	\$3000(See 4 supra)
	7-0533	75.400	Very serious	Gross negligence	\$3000(See 4 supra)

~281

7-0568	75.400	Very serious	Gross negligence	\$3000(See 4 supra)
7-0689	75.200	Extremely serious	High degree of ordinary negligence	\$9000
7-0717	75.400	Extremely serious	Gross negligence	\$5000(See 4 supra)
7-0766	75.200	Extremely serious	High degree of ordinary negligence	\$5000(See 4 supra)

78-680
(See 6 supra)

8-0027	75.400	Non-serious	Ordinary	\$ 100
8-0028	75.200	Non-serious	Ordinary	\$ 100
8-0029	75.200	Non-serious	Ordinary	\$ 100
8-0030	75.400	Non-serious	Ordinary	\$ 115
8-0031	75.400	Non-serious	Ordinary	\$ 100
8-0032	75.400	Non-serious	Ordinary	\$ 110
8-0033	75.200	Non-serious	Ordinary	\$ 130
8-0034	75.400	Non-serious	Ordinary	\$ 110
8-0035	75.200	Non-serious	Ordinary	\$ 130
8-0036	75.400	Non-serious	Ordinary	\$ 115
8-0037	75.200	Non-serious	Ordinary	\$ 130

~282

79-203

044007	75.200	Serious	Gross negligence	\$1500(See 4)
044446	75.200	Serious	Gross negligence	\$1500(See 4)
044558	75.200	Serious	Gross negligence	\$2500(See 4)

Total \$115,000