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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 Proceeding

Docket No. PITT 79-157-P
A/O No. 36-00803-03003

v.

Oakmont Mine

HARMAR COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT
ORDER TO PAY

The Solicitor has filed a motion to approve a settlement in the above-captioned action. This case has one violation. The violation was for section 75.1714-2(b) on the ground that a miner was found working without his self rescuer device. The Solicitor advises that the miner left his self rescuer approximately 125 feet away from the immediate area in which he was working and that the miner stated that he had forgotten to take it with him. The amount originally assessed was \$98. The Solicitor recommends a reduction to \$44 on the ground that the operator was not negligent.

I accept the Solicitor's representations. Under the circumstances I find the operator was not negligent. Although a penalty must be assessed because a violation occurred the absence of negligence is relevant in determining the appropriate penalty assessment. I note that in Docket No. PITT 79-120-P I approved a settlement of \$72 for a violation of the same mandatory standard where the operator was not negligent. The difference in the penalty amount is justified by a difference in gravity. My review of the citations in both cases indicates that the miner in this case was in a less dangerous location. It should not, however, be necessary for me to independently review the citations to find reasons to support the Solicitor's recommended settlements. The Solicitor himself should furnish the requisite data.

~521

ORDER

The operator is ORDERED to pay \$44 within 30 days from the date of this decision.

Paul Merlin

Assistant Chief Administrative Law Judge