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SOL (MSHA) V. SOUTHERN OHIO COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

Civil Penalty Proceeding

Docket No. VINC 79-108-P
A.O. No. 33-01172-03010

v.

Meigs No. 1 Mine

SOUTHERN OHIO COAL COMPANY,
RESPONDENT

DECISION

Appearances: Linda Leasure, Attorney, Office of the Solicitor,
U.S. Department of Labor, Cleveland, Ohio, for the
Petitioner David M. Cohen, Esquire, Lancaster, Ohio,
for the Respondent

Before: Judge Koutras Statement of the Case

This proceeding is one of twelve docketed cases scheduled for hearings on the merits at Columbus, Ohio, June 19, 1979. A petition for assessment of civil penalty was filed in this case by the petitioner pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a) on January 4, 1979, seeking civil penalty assessments for two alleged violations of the Act and implementing mine safety and health standards. Respondent filed timely answers contesting the citations, and pursuant to notice, the parties appeared at the time and place for the hearing. During a prehearing conference on the record, the parties informed me that they had reached a tentative settlement with respect to this docket. They requested an opportunity to be heard with respect to the proposed settlement and that I approve same pursuant to Commission Rule 29 CFR 2700.27(d).

The parties were afforded an opportunity to present arguments in support of the proposed settlement. The citations, initial assessments, and the proposed settlement amounts are as follows:

Citation No.	Date	30 CFR Section	Assessment	Settlement
279508	7/11/78	75.1722(b)	\$530	\$265
279522	7/18/78	75.200	\$445	\$325

Discussion

In support of its recommendation concerning the proposed civil penalty of \$265 for the guarding citation, petitioner's counsel pointed out that the cited belt pulley area was protected with a guard of sorts, namely chicken wire over most of the exposed area. In addition, the condition was abated rapidly in approximately an hour and twenty-five minutes. The

respondent believed the existing guard was adequate but was willing to settle the matter.

With regard to the roof control plan citation, section 75.200, respondent argued that the roof bolter was coming in to bolt the area cited at the time the inspector cited the violation. Petitioner stated that the condition was abated promptly, that the pertinent roof control plan provisions were explained to the working crew by the operator, and that the petitioner was satisfied with the proposed settlement after taking into account the question of negligence and gravity of the situation presented (Tr. 4-13).

ORDER

After due consideration of this matter, I find that the proposed settlement should be approved. Accordingly, pursuant to 29 CFR 2700.27(d), respondent is ordered to pay civil penalties totaling \$590.00 in satisfaction of the cited violations within thirty days of the date of this decision. Upon receipt of payment, this matter is dismissed.

George A. Koutras
Administrative Law Judge