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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 79-113-P
A.O. No. 33-02308-03011 R

v.

Raccoon No. 3 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
279979	8/17/78	75.202	\$345	\$225
277702	8/18/78	75.606	\$106	\$106

Discussion

With regard to citation no. 277702, respondent agreed to pay the penalty which was initially assessed for the cited violation. With regard to the proposed reduction for citation no. 279979, respondent pointed out that the cited overhanging rib conditions were 52 inches high and because of relatively low coal, the chances of someone being under the rib and being injured was minimal. Further, there is no evidence that the ribs were loose and the inspector did not measure the extent of the overhanging ribs. In addition, since the ribs had to be sheared down to abate the citation, this was indicative of the fact that the ribs were not loose. Petitioner concurred in respondent's assessment of the gravity presented, although recognizing that a crushing hazard to a machine operator was present (Tr. 36-40).

In addition to the evidence and arguments presented as to the specific circumstances surrounding the citations, petitioner presented information concerning the size and scope of respondent's mining operations at the Raccoon No. 3 Mine and evidence concerning the prior history of violations at that mine (Tr. 35, Exhibit P-1).

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 \$331.00 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