

CCASE:
SOL (MSHA) V. CONSOLIDATION COAL
DDATE:
19790814
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

v.

CONSOLIDATION COAL COMPANY,
RESPONDENT

Civil Penalty Proceeding

Docket No. WEVA 79-35
A/O No. 46-01433-03024

Loveridge Mine

DECISION APPROVING SETTLEMENT

ORDER TO PAY

The Solicitor has filed a motion to approve a settlement in the above-captioned proceeding.

In his motion, the Solicitor advises the following:

1. The attorney for the Secretary and the respondent's attorney Karl T. Skrypak have discussed the alleged violation and the six statutory criteria stated in Section 110 of the Federal Mine Safety and Health Act of 1977.

2. Pursuant to those discussions, an agreed settlement has been reached between the parties in the amount of \$114.00. The original assessment for the alleged violation was \$160.00.

3. A reduction from the original assessment is warranted because this violation was committed by an independent contractor, West Virginia Electric Company, performing operations at Respondent's mine. This citation was issued when an inspector observed an employee of this independent contractor not wearing safety shoes. Discussions with the Respondent's representative indicate that it maintained no direct control over the daily operations of this contractor or the conduct of its employees. Therefore, a reduction in negligence points is warranted, resulting in a reduction of the assessed penalty of \$160.00 to \$114.00.

This reduction more accurately reflects the circumstances surrounding this violation and the application of the six statutory penalty assessment criteria thereto and should therefore be approved.

~1054

In Secretary of Labor, Mine Safety and Health Administration v. Republic Steel Corporation (79-4-4) dated April 11, 1979, the Federal Mine Safety and Health Review Commission held that under the 1969 Act, the Secretary of Labor could issue citations against the owner of a coal mine for violations committed by independent contractors. Under the present Act, an operator is specifically defined to include an independent contractor as well as the operator. However, I believe the fact that the independent contractor now is specifically defined as an operator does not limit the Secretary's discretion with respect to whom to cite. Chief Judge Broderick reached the same conclusion in Secretary of Labor, Mine Safety and Health Administration v. Old Ben Coal Company (VINC 79-119-P) dated April 27, 1979. Accordingly, the citation against the operator here is proper. The Commission also held in Republic that where an enforcement action is undertaken against the operator, the independent contractor may also be proceeded against in a separate or consolidated proceeding. I believe the amount of the penalty sought against the operator properly can take into account the circumstances of the violation. Chief Judge Broderick also reached the same conclusion in the Old Ben case cited above. Accordingly, I accept the Solicitor's representations regarding negligence of the operator. I would state however, as I have on prior occasions, that enforcement of the Act would be better served if the Secretary proceeded against both the operator and the independent contractor.

ORDER

The operator is ORDERED to pay \$114 within 30 days from the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge