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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. DENV 79-91-PM
A.O. No. 10-00088-05001

v.

Lucky Friday

HECLA MINING COMPANY,
RESPONDENT

DECISION

Appearances: Marshall P. Salzman, Trial Attorney, Office of
the Solicitor, U.S. Department of Labor, San Francisco,
California, for the petitioner
Fred M. Gibler, Esquire, Kellogg, Idaho, for the
respondent

Before: Judge Koutras

Statement of the Case

This proceeding was one of two docketed cases heard in
Wallace, Idaho on July 12, 1979. The case was initiated by the
petitioner on November 28, 1978, when it filed a petition for
assessment of civil penalty pursuant to section 110(a) of the
Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a)
seeking civil penalty assessments for five alleged violations of
certain mandatory safety standards found in Part 57, Title 30,
Code of Federal Regulations. Respondent filed a timely answer
contesting the petition and the case was docketed for a hearing
on the merits. However, when the docket was called the parties
advised that they had reached certain stipulations and agreements
and had reached a tentative settlement as to the civil penalties
which they believe should be assessed in this proceeding.
Petitioner was afforded an opportunity to present arguments in
support of its proposed settlement for my consideration pursuant
to Commission Rule 29 CFR 2700.30.

Discussion

The parties stipulated to the Commission's jurisdiction, and
agreed that the respondent is a large mine operator, has no prior
history

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of assessed violations, and that the imposition of civil penalties would not impair its ability to remain in business (Tr. 3-4).

The petition for assessment of civil penalties filed in this case by the petitioner pertains to the following citations and proposed penalties:

Citation No.	Date	30 CFR Section	Assessment
350613	3/28/78	57.3-22	\$255.00
348401	3/30/78	57.3-22	\$170.00
348402	4/5/78	57.16-3	\$180.00
350614	4/6/78	57.3-22	\$150.00
350615	4/11/78	57.6-5	\$370.00

During the hearing, petitioner's counsel indicated that the proposed assessments shown above which appeared in the petition filed on November 29, 1978, does not reflect the results of an assessment conference which took place prior to the filing of the petition but after the initial assessments (tr. 5). As a result of that conference the civil penalties reflected in the petition were reduced by the assessments office as follows:

Citation No.	Adjusted Assessments
350613	\$ 90.00
348401	\$106.00
348402	\$130.00
350614	\$ 98.00
350615	\$122.00

Petitioner argues that Citations 350613 and 350614 should be further reduced to \$45.00 and \$50.00 respectively. In support of this, counsel argues that his investigation indicates that the assessment office placed significant emphasis on the element of negligence in reaching the initial assessments, but that in fact the circumstances surrounding the citations in question indicates that the degree of knowledge on respondent's part at the time the citations issued was significantly lower than that assumed by the assessment office, and that the citations were timely abated (Tr. 6). With respect to Citations 348402 and 350615, counsel indicated that the adjusted assessments made after the conference are appropriate and that respondent had agreed to make payment in the full adjusted amounts (Tr. 6). As for citation 348401, counsel asserted that upon further investigation of the circumstances surrounding that citation petitioner cannot sustain its burden of proof and therefore moved for leave to dismiss the citation (Tr. 5-6).

Citations 350613 and 350614 both involve violations of the provisions of 30 CFR 57.3-22 which requires pre-shift and on-shift examinations of working places and ground conditions to insure that

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adequate testing and ground control practices are followed and that loose ground be either removed or adequately supported. A review of the answer and arguments filed by the respondent in defense of these two citations reflects that the miners working in the areas where the conditions were cited were aware of the loose ground and were in the process of removing or bolting the areas cited so as to insure the safety of miners. The on-coming shifts had apparently conducted the required pre-shift examinations, discovered the conditions, and were in the process of taking corrective action. In the circumstances, I am convinced that these facts obviously influenced petitioner's counsel in his case preparation and evaluation of the circumstances which prevailed on the day in question, particularly with respect to the question of negligence. Accordingly, the proposed settlements were approved from the bench (tr. 7), and that approval is herein reaffirmed.

With regard to citations 348402 and 350615, the arguments presented on the record convinced me that the proposed settlements should be approved (Tr. 7), and that conclusion and finding on my part is also herein reaffirmed. As for the remaining citation 348401, petitioner's motion to dismiss was granted (Tr. 8). In effect, petitioner sought leave to withdraw its petition for assessment of civil penalty as to that citation, and the granting of the motion to dismiss is likewise reaffirmed.

In summary, after full and careful evaluation of all of the circumstances surrounding the citations at issue in these proceedings, including the criteria set forth in Section 110(i) of the Act, I am of the view that the settlements and disposition made in these proceedings pursuant to 29 CFR 2700.30 will effectuate the deterrent purpose of civil penalties for violations such as those alleged in the instant citations.

Order

Respondent is ordered to pay civil penalties totaling \$342.00 in satisfaction of the settled citations within thirty (30) days of the date of this decision and order. It is further ordered that citation 348401 be dismissed.

George A. Koutras
Administrative Law Judge