

CCASE:
SOL (MSHA) V. CONSOLIDATION COAL CO.
DDATE:
19790907
TTEXT:

~1340

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 79-191-P
A/O No. 36-06133-03008

v.

Westland No. 2 Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENTS

ORDER TO PAY

On July 2, 1979, the Solicitor filed a motion to approve settlements for the three violations in this proceeding. Two of the citations were issued for inadequate roof support and were assessed at \$106 and \$122. The recommended settlements were for \$72 and \$98. The Solicitor advised the reductions were warranted by the operator's good faith abatement. The third citation was issued for failure to wear proper eye protection and was assessed at \$60. The recommended settlement was \$38. The Solicitor advised this reduction was warranted because the operator's negligence was like that found in North American Coal Corporation, 3 IBMA 93 (1974). The Solicitor further advised that the miner had received a disciplinary slip from the operator.

On August 6, 1979, I disapproved the proposed settlements. I noted then that the amounts originally assessed for the roof control violations were the minimum that could be assessed under the circumstances, and that rapid abatement could not justify any further reductions. In reference to the proposed settlement for the eye protection violation, I noted the Solicitor's citation of North American appeared inapposite, since the citation there was vacated. In view of these findings, I ordered the parties to submit additional statements on or before August 20, 1979.

The Solicitor has now filed another motion to approve settlements for these violations. In his motion, the Solicitor advises the following:

1. The attorney for the Secretary and the respondent's attorney Michel Nardi have discussed the alleged violations 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 \$228.00. The original assessment for the alleged violations was \$288.00.

3. A reduction from the original assessment is warranted in light of the following circumstances. The parties, pursuant to the Disapproval of Settlement of August 6, 1979, have again discussed the facts and circumstances surrounding these two violations and have concluded as follows:

a. Citation No. 231524 was issued for a violation of the operator's roof control plan (30 CFR 75.200). The posts were not installed on four foot centers and the width of this intersection was therefore not in compliance with the approved roof control plan. The originally assessed penalty of \$106 accurately reflects the operator's negligence and the gravity of this violation and should therefore be approved.

b. Citation No. 231525 was also issued when an inspector observed that the approved roof control plan was not being followed. Here, the total width of an intersection was 59 1/2 feet as opposed to the 58 foot distancing required by the roof control plan. The originally assessed penalty of \$122 accurately reflects the operator's negligence and the gravity of this violation of 30 CFR 75.200 and should therefore be approved.

c. Citation No. 231527 was issued when an inspector observed a miner travelling in an open type locomotive without wearing eye protection. This violation of 30 CFR 75.1720(a) was originally assessed at \$60.00. Here, the miner involved was issued a disciplinary slip for failing to wear eye protection as required by the operator. These circumstances closely resemble those found in North American Coal Company, 3 IBMA 93 (1974) and therefore, no penalty should be assessed here.

I accept the Solicitor's representations. Accordingly, I conclude the recommended settlements are consistent with and will effectuate the purposes of the Act. The recommended settlements are therefore, approved.

~1342

ORDER

The operator, having already paid \$206, is ORDERED to pay an additional \$22 within 30 days from the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge