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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

v.

CONSOLIDATION COAL COMPANY,  
RESPONDENT

Civil Penalty Proceeding

Docket No. PENN 79-2  
A/O No. 36-00965-03024

Westland Mine

DECISION APPROVING SETTLEMENTS

ORDER TO PAY

On July 2, 1979, the Solicitor filed a motion to approve settlements in the above-captioned proceeding. In this motion, the Solicitor moved to vacate Citation No. 231502 which was issued for failure to maintain adequate roof support, relying upon the decision of the Interior Board of Mine Operations Appeals in Plateau Mining Company, 2 IBMA 303.

On August 13, 1979, I disapproved the recommended settlement, stating that no authority had extended the decision in Plateau Mining to other mandatory standards, particularly standards involving roofs which are the major cause of serious injury and death in the mines. In the absence of any such precedent and because inadequately supported roof could present a very real danger even when dangered off, I concluded approval could not be granted on the basis of a few brief representations in a motion to approve settlements. However, I did note that the factors described by the Solicitor could be considered as affecting gravity.

The Solicitor has now filed another motion to approve settlements. In her motion, the Solicitor advises the following:

A reduction from the original assessment is warranted for citation number 231502. As stated in the Solicitor's previously submitted motion, the citation alleges a violation of 30 CFR 75.200 in that eight bolts above a track haulage were broken or missing in a 100 foot expanse of roadway. Important to consider in reducing the penalty allocation is the fact that the area had been dangered off by management and was under repair when the citation was issued. In addition, this area was not regularly travelled and the roof was in good condition. This information effects the negligence and gravity

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factors underlying the penalty assessment. The proposed assessment gave 12 negligence and 10 gravity points. Considering the above, imposition of only 9 negligence and 7 gravity points is reasonable. The revised penalty point total is 44. Application of the penalty conversion table results in a \$240.00 penalty assessment.

The Solicitor has also recommended settlements for the other two citations in this petition. In her original motion, she advised the following:

CITATION NO. 231882; 30 CFR 75.516-2(c): This citation was written as two telephone conductor wires were without additional insulation and were in contact with energized power wires and crossing under a high voltage cable. The \$180.00 assessment for this citation should be reduced to \$50.00. This reduction is warranted under the circumstances as further investigation has revealed that the telephone wires in question were not energized at the time. The wires were dead and not connected to any telephone. Therefore, no power was going through the telephone conductor wires and no fire hazard existed. This condition had been previously cited on October 18, 1978 and abated by disconnecting the power. Such abatement was approved. The date this citation was written October 30, 1978, the wires were still without power. Accordingly, such a reduction accurately reflects the negligence of the operator and the probability of an injury occurring under the circumstances.

CITATION NO. 231893; 30 CFR 75.1704: This citation alleges that a return escapeway was in an unsafe condition because a 25 foot roof fall had occurred and loose unsupported roof existed in the area. It is true that a violation exists in this case. However, this roof fall occurred after the weekly examination of the return escapeway had been made. In fact, on just the day previous to issuance of this citation, the area had been walked and no roof fall had occurred. Under the circumstances, the operator's negligence is minimal. Although a violation technically existed, the negligence factors greatly in the imposition of the \$195.00 assessment. \$150.00 is more appropriate.

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In her supplemental motion, the Solicitor added the following:

The reasons given by the Secretary for reducing the penalty for citation number 231882 should be clarified as follows. In an inspection conducted prior to the one giving rise to the instant citation, a citation was issued because the same telephone wires involved in this citation were found not to be insulated. The abatement method approved in that case was deenergization of the telephone wires. In this case, another inspector seeing the uninsulated, deenergized wires, issued the citation involved herein. For these reasons, the operator's negligence is minimal. This criteria has been given considerable weight in reducing the proposed penalty amount from \$180.00 to \$50.00.

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.

ORDER

The operator is ORDERED to pay \$440 within 30 days from the date of this decision.

Paul Merlin  
Assistant Chief Administrative Law Judge