

CCASE:  
SOL (MSHA) V. BLUE RIDGE COAL CORP.  
DDATE:  
19790926  
TTEXT:

~1439

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.

BLUE RIDGE COAL CORPORATION,  
RESPONDENT

Civil Penalty Proceeding

Docket Nos.    Assessment Control Nos.

PIKE 79-27-P      15-09779-03001

PIKE 79-28-P      15-09779-03002

No. 4 Mine

DECISION APPROVING SETTLEMENT

Appearances: John H. O'Donnell, Esq., Office of the Solicitor,  
Department of Labor, for Petitioner  
Mr. Edward S. Pinson, Phelps, Kentucky for  
Respondent

Before        :    Administrative Law Judge Steffey

When the hearing was convened on August 7, 1979, in the above-entitled proceeding, counsel for petitioner and respondent's representative made statements in which it was explained that respondent is contesting neither the occurrence of the violations alleged in MSHA's Petitions for Assessment of Civil Penalty nor the amounts of the civil penalties proposed by the Assessment Office for those alleged violations. The only reason that respondent did not pay the proposed penalties when respondent was notified of them by the Assessment Office was that respondent had suffered a loss of about a quarter of a million dollars and has had a serious cash flow problem which prevented it from being able to pay the proposed civil penalties in a timely fashion.

Respondent has been gradually improving its financial condition in recent months and it was stated at the hearing that respondent believed it could now pay the penalties proposed in this proceeding if it were given a period of 30 days within which to pay the penalties proposed in Docket No. PIKE 79-27-P and a period of 60 days within which to pay the penalties proposed in Docket No. PIKE 79-28-P.

Respondent's request for a period of 30 and 60 days, respectively, to pay the total penalties proposed by the Assessment Office is reasonable in the circumstances and will hereinafter be granted.

The record shows that respondent's No. 4 Mine was producing between 250 and 300 tons per day at the time the citations involved in this proceeding were written. Respondent has obtained some additional equipment

and hopes to increase production to about 400 tons per day. Respondent currently employs eight miners (Tr. 6). On the basis of the foregoing information, I find that respondent is a small operator and that penalties should be in a low range of magnitude insofar as they are based on the criterion of the size of respondent's business. Respondent's president indicated that if his business continued to improve, he would be able to pay the proposed penalties and continue in business (Tr. 4).

The inspectors' citation sheets and subsequent action sheets show that respondent demonstrated a normal good faith effort to achieve rapid compliance. With respect to Citation Nos. 64031, 64033, 64034, and 64035, respondent demonstrated an outstanding effort to achieve rapid compliance and the penalty points were accordingly reduced by the Assessment Office in determining the penalties proposed for those four alleged violations.

For all of the alleged violations, the Assessment Office determined that respondent had a relatively adverse history of previous violations because from 30 to 40 percent of the points used to derive penalties are attributed by the Assessment Office to respondent's history of previous violations.

The Assessment Office attributed about 33 to 40 percent of its points for assessing penalties to the criterion of negligence and from 10 to 30 percent of its point for assessing penalties to the criterion of gravity.

The two lowest penalties proposed by the Assessment Office were \$122 each. One of those was appropriately low because it related to an alleged violation of Section 75.212 for failure to keep proper records. That violation would not have been a serious threat to a miner's safety. The other low penalty of \$122 related to an alleged violation of Section 75.1714 for failure to provide a self-rescue device for each miner underground. Without some testimony from the inspector to show otherwise, I would have been inclined to assess a larger penalty than \$122 for that violation. On the other hand, Exhibit 1 does not show that respondent has previously violated that section of the mandatory safety standards. In the absence of testimony, I cannot find that a penalty of \$122 for the alleged violation of Section 75.1714 is unreasonably low.

The other alleged violations are all moderately serious and involve ordinary negligence except for the violations of Section 77.506 alleged in Citation Nos. 64157 and 64158 which state that respondent had bridged over some fuses with solid wire. I generally consider it to be gross negligence for an operator to bridge over fuses and thereby destroy overload and short-circuit protection. In each instance, the Assessment Office determined the proposed penalties of \$295 and \$255 for the alleged

violations of Section 77.506 by assigning within one or two points the maximum number of points permissible under 30 CFR 100.3 for ordinary negligence. Inasmuch as the bridged fuses were on the surface of the mine where the seriousness of fire or smoke would have been less dangerous than such hazards would have been underground, I cannot conclude that the penalties are necessarily unreasonably low.

My review of the remaining violations alleged by MSHA's Petitions for Assessment of Civil Penalty filed in this proceeding shows that they were reasonably evaluated under the six criteria and I find that respondent's agreement to pay the proposed penalties as hereinafter ordered should be approved.

WHEREFORE, it is ordered:

(A) Respondent's agreement to pay the full penalties proposed by the Assessment Office is approved as hereinafter ordered in paragraphs (B) and (C).

(B) Pursuant to respondent's agreement at the hearing with respect to MSHA's Petition for Assessment of Civil Penalty filed in Docket No. PIKE 79-27-P, Blue Ridge Coal Company shall pay, within 30 days from the date of this decision, civil penalties totaling \$4,350.00 which are allocated to the respective alleged violations as follows:

Citation No. 64031	3/20/78	75.503	.....	\$	140.00
Citation No. 64032	3/20/78	75.400	.....		255.00
Citation No. 64033	3/20/78	75.517	.....		170.00
Citation No. 64034	3/20/78	75.517	.....		170.00
Citation No. 64035	3/20/78	75.1710	.....		160.00
Citation No. 64036	3/20/78	75.313	.....		210.00
Citation No. 64037	3/20/78	75.1100-3	.....		225.00
Citation No. 63369	5/15/78	75.400	.....		195.00
Citation No. 63370	5/15/78	75.503	.....		210.00
Citation No. 63371	5/15/78	75.313	.....		225.00
Citation No. 63372	5/15/78	75.313	.....		225.00
Citation No. 63373	5/15/78	75.1710	.....		180.00
Citation No. 63374	5/15/78	75.1722	.....		325.00
Citation No. 63375	5/15/78	75.326	.....		395.00
Citation No. 63376	5/15/78	75.523-2	.....		275.00
Citation No. 63377	5/15/78	75.1100-3	.....		160.00
Citation No. 63378	5/15/78	75.503	.....		170.00
Citation No. 63241	5/16/78	75.518	.....		240.00
Citation No. 63242	5/16/78	75.701	.....		225.00
Citation No. 63243	5/16/78	75.512	.....		195.00
Total Penalties in Docket No. PIKE 79-27-P					\$4,350.00

~1442

MSHA v. Blue Ridge, Docket Nos. PIKE 79-27-P, et al. (Contd.)

(C) Pursuant to respondent's agreement at the hearing with respect to MSHA's Petition for Assessment of Civil Penalty filed in Docket No. PIKE 79-28-P, Blue Ridge Coal Company shall pay, within 60 days from the date of this decision, civil penalties totaling \$2,399.00 which are allocated to the respective alleged violations as follows:

Citation No. 63244	5/16/78	75.523	.....	\$	210.00
Citation No. 63380	5/16/78	75.503	.....		160.00
Citation No. 63501	5/16/78	75.1101-7	.....		210.00
Citation No. 63502	5/16/78	75.1714	.....		122.00
Citation No. 64153	5/16/78	77.504	.....		210.00
Citation No. 64154	5/16/78	77.512	.....		160.00
Citation No. 64155	5/16/78	75.512	.....		122.00
Citation No. 64156	5/16/78	77.504	.....		240.00
Citation No. 64157	5/16/78	77.506	.....		295.00
Citation No. 64158	5/16/78	77.506	.....		255.00
Citation No. 64159	5/16/78	77.505	.....		160.00
Citation No. 64160	5/16/78	75.517	.....		255.00
Total Penalties in Docket No. PIKE 79-28-P .....					\$ 2,399.00

Richard C. Steffey  
Administrative Law Judge