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SOL (MSHA) V. THE VALLEY CAMP COAL
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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.

THE VALLEY CAMP COAL COMPANY,
RESPONDENT

Civil Penalty Proceeding

Docket No. MORG 79-77-P
A.O. No. 46-01440-02013

Alexander Underground Mine

DECISION

Appearances: John H. O'Donnell, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Petitioner
Ronald Johnson, Esq., Schrader, Stanp and Recht,
Wheeling, West Virginia, for Respondent

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASE

The above case arose on the filing of a petition for the assessment of civil penalties alleging three violations of mandatory safety standards occurring in August, September and November 1977. The case therefore arose under the provisions of the Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq. Pursuant to notice, the case was called for hearing on the merits in Wheeling, West Virginia, on September 5, 1979. George Messner, James E. Mackey and John Radosevic testified on behalf of Petitioner, Tommy Tucker and Arnold Miszaros, on behalf of Respondent. At the conclusion of the hearing, the parties waived the filing of proposed findings and conclusions and I issued a bench decision as follows:

JUDGE BRODERICK: All right. With respect to the violations alleged in this proceeding, I find, first, that the Respondent at the time of the alleged violations was a large operator. I further find that the Respondent's history of prior violations was not significant, and the penalties assessed will not be increased because of that history.

With respect to the violation charged in Government's Exhibit 2, which is Notice 3-GM issued August 23, 1977, I find and conclude that the violation alleged was not established by the evidence, and therefore no penalty is imposed.

With respect to the violation charged in Government's Exhibit Number 6, Notice 2-GM, September 21, 1977, I find that a violation of 30 CFR 70.201 was established by the evidence showing that an inaccurate sampling was being taken of the respirable dust in the mine atmosphere of the 004 occupation in the subject mine. I find that the violation was not serious. I find that it was not caused by Respondent's negligence. I find that the condition was abated promptly and in good faith. I assess a penalty of \$50 for this violation.

With respect to the violation charged in Notice Number 1-JR, November 1, 1977, the Government's Exhibit 9, I find that there was established a violation of 30 CFR 75.1403 because of the failure of Respondent to provide a lifting jack and bar for the Number 7 and 9 self-propelled personnel carriers in the subject mine.

This equipment was required by Safeguard Notice 1-CBS, issued July 26, 1973. I find that the condition was not serious, that there is no evidence that it was caused by Respondent's negligence. I find that it was abated promptly and in good faith. I assess a penalty of \$75 for this violation.

A written decision affirming these findings will be issued, and an appeal time will run from the date of the issuance of the written decision.

That concludes the record of this proceeding. I thank you very much, gentlemen.

I hereby affirm the bench decision and make the additional findings and conclusions as follows:

1. Government's Exhibit G2, Notice No. 3 GM, August 23, 1977, alleges a violation of 30 CFR 70.100(b) in that the average respirable dust concentration exceeded the allowable limit for a particular occupation in Respondent's mine. This was based upon 10 samples submitted by Respondent between June 15 and August 8, 1977. The evidence showed that two of the samples were submitted in error, in that they were taken from employees in another section of the mine. Absent the two samples, the average concentration was within the applicable limits. Respondent was charged with exceeding the respirable dust concentration, not with failing to submit accurate samples. The violation charged was not shown to have occurred.

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2. Government's Exhibit G6, Notice No. 2 GM, September 21, 1977, alleges a violation of 30 CFR 75.201 in that a respirable dust sampler belonging to a section mechanic was found to be operating on the table in the dinner hole. The standard requires that accurate samples be taken and the evidence clearly shows that a patently inaccurate sample was being taken. There is no evidence that Respondent was aware of the facts prior to the notice being issued.

ORDER

Based on the above findings of fact and conclusions of law, Respondent is ordered to pay, within 30 days of this decision, the following civil penalties for the violations found herein to have occurred:

Notice	30 CFR Standard	Penalty
2 GM 9/21/77	70.201	\$ 50
1 JR 11/1/77	75.1403	75
		Total \$125

James A. Broderick
Chief Administrative Law Judge