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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. HOPE 78-569-P  
A/O No. 46-01409-02028 V

Maitland Mine

DECISION

Appearances: Leo J. McGinn, Esq., Office of the Solicitor,  
U.S. Department of Labor, Arlington, Virginia,  
for Petitioner  
Karl T. Skrypak, Esq., Consolidation Coal Company,  
Pittsburgh, Pennsylvania for Respondent

Before: Judge Forrest E. Stewart

On August 29, 1979, a hearing was held in the above-captioned proceedings in Charleston, West Virginia. At that time, the Administrative Law Judge approved a settlement negotiated by the parties and ordered Respondent to pay the agreed-upon sum of \$1,500 within 30 days of the date of the order.

A 104(c)(2) order of withdrawal had been issued on August 29, 1977, at Respondent's Maitland Mine alleging a violation of the approved roof control plan. The inspector described the condition or practice as follows:

Loose, unsupported roof and ribs were present along the mantrip and supply track haulage system at several locations from the first left belt overcast to a point about five crosscuts outby the two left supply hole, and the conditions were or should have been known to management in that they were obvious."

MSHA's Office of Assessments originally proposed a penalty of \$6,000. As grounds for the reduction in proposed penalty, Counsel for Petitioner asserted the following:

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The Office of Assessments waived the use of the formula contained in 30 CFR 100.3 in determining the civil penalty on the basis that unwarrantable failure had been found and assessed a penalty in the amount of six thousand dollars.

As a result of prehearing discussions with the MSHA inspector who issued the Order and discussions with Mr. Skrypak, the attorney for Consol, an agreement was reached to settle the case for an amount of fifteen hundred dollars.

We believe the amount of fifteen hundred dollars in this instance is sufficient to support the purposes of the Act in preventing violations, accidents and injuries, and is in accordance with the criteria and the Act itself.

Essentially, the area which we cited is only vaguely described by the inspector as to gravity. Several locations were mentioned by him. In attempting to elicit definite testimony as to the exact nature of the roof conditions, the inspector had taken no notes and could not give a more precise and detailed description of the allegations on which the assessment was made.

I felt we would have problems in presenting a clearcut description as to the gravity and extent of the conditions cited. The area cited had not been used as an active haulage or entry for transporting men.

The prime consideration was the question of unwarrantability, and upon this Consolidation has given evidence that the condition was, at the time the Order issued, currently being rehabilitated and being brought up to the standards of the roof control plan, that good faith was being shown at that time, and even more so after the issuance of the Order, abating those conditions.

They were, in fact, expending time and money to remedy the condition before the Order had been issued. So, with these factors considered -- also the fact no injuries were either, in fact, caused or were they probable to be caused due to the remote area of the condition -- it is unlikely serious injuries would have resulted -- although ordinarily a roof condition must be considered as an extremely serious violation.

We feel the penalty in the amount of fifteen hundred dollars is sufficient to deter future violations and recommend it be accepted by the Administrative Law Judge.

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Counsel for Respondent placed on record the following dollar amounts and man-hours which were expended by the operator to correct the situation prior to the issuance of the order:

During the period of approximately six weeks before this particular Citation or Order was issued and for a period of some four weeks thereafter, Consolidation Coal Company spent a total of forty-nine working days in this area, amounting to eighty-seven man shifts which covered over two thousand man hours.

During this two thousand man hours, the following work was performed: Over ninety feet of draw rock was taken down, the ninety feet was then rebolted with approximately ninety roof bolts.

Eleven breaks of locust timbers were set. That translates in layman's terms to approximately three hundred timbers. Thirty crossbars were set, those being steel crossbars.

The high voltage and trolley wire was rehung. The approximate cost of the work -- by figuring only the direct cost of labor and supplies -- is around seventy-five thousand dollars. The direct cost, which cannot be figured accurately, would probably place the value of this work in excess of one hundred thousand dollars.

The approval of settlement and the order requiring that the respondent pay the sum of \$1,500 within 30 days of the date of the hearing are hereby affirmed.

Forrest E. Stewart  
Administrative Law Judge