CCASE:
SOL (MSHA) V. CARBON FUEL CO.
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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	Civil Penalty Proceeding Docket No. HOPE 78-623-P A/O No. 46-02877-02012 F
v.	
CARBON FUEL COMPANY, RESPONDENT	No. 9 - No. 8 Drift Mine

DECISION

Appearances: Leo J. McGinn, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for Petitioner

Before: Judge Stewart

The above-captioned case is a civil penalty proceeding pursuant to section 110 of the Federal Mine Safety and Health Act of 1977. A hearing in this matter was held on August 29, 1979, in Charleston, West Virginia. At that time, settlement of the case was proposed in the amount of $3,500. MSHA's Office of Assessments had originally proposed an assessment of $10,000. In support of the motion for settlement, counsel for Petitioner asserted the following:

> Your Honor, this case involves a single violation, a 104(b) Notice alleging a violation of 75.200 issued January 11, 1977, for failure to comply with the approved roof control plan, in that the roof bolting machine operator was not using the temporary supports, roof bolting in the face area, and an accident occurred; and the bolter was killed as a result of the accident.
>
> An assessment was made at that time of ten thousand dollars. Your Honor, when this case was assigned for hearing during this week, I obtained the file from Mr. Edward Fitch, an attorney of our office, and was advised by him -- and this was confirmed by correspondence in the file -- this actually had been set last year for prehearing by another judge and had been continued. In the meantime, settlement negotiations had been carried on.

~1610

By letter dated July 30, 1979, a letter from C. Lynch Christian, III, attorney for Carbon Fuel, to Mr. Edward Fitch, Esquire, of the Office of the Solicitor, confirmed a settlement agreement reached between the parties in the amount of three thousand five hundred dollars.

> I examined the material available in the file, discussed the case with Mr. Fitch, and was told by him agreement had been reached and that a motion, for some reason or another, had not been filed by the parties asking that the amount be approved and the case be dismissed.
>
> Basically, the reasons are contained in a letter from Mr. Christian to Mr. Fitch which explains the allegations of negligence on the part of the operator. Evidently, the evidence accepted by Mr. Fitch is that temporary supports were available on the continuous mining machine and should have been used at that time.
>
> The victim had attended the training classes in roof and rib control and had received a full explanation of the requirements of the plan only two months prior to the accident, including the requirement temporary supports be set while bolting.
>
> The victim had been caught, as explained in the letter, "--by mine management without or with improperly set temporary supports on three occasions since 1974. On each of these occasions, the roof bolter had been shut down, the roof control procedures carefully explained and a verbal or written warning issued to Mr. Morris," the victim.
>
> In view of these circumstances, Mr. Fitch accepted the contention that management could not be held to be grossly negligent in the unfortunate fatal accident which occurred here.
>
> Although the violation is, of course, serious with the death of the man, it was considered a penalty in the amount of thirty-five hundred dollars was sufficient and would be acceptable under the circumstances of the evidence available for proof as to negligency.
>
> Having concurred with Mr. Fitch and examined the documents in the file, I find no reason for the Office of the Solicitor to back out of the agreement which had been reached between the two attorneys at an earlier time.

~1611

So, I move the penalty in the amount of thirty-five hundred dollars be accepted and the proceeding be dismissed upon payment.

Counsel for Petitioner also introduced into evidence two letters from counsel for Respondent to counsel for Petitioner. The first of these was a letter of agreement, dated July 30, 1979. The second, dated May 3, 1979, set out Respondent's position with respect to the issue of negligence.

At the conclusion of the hearing, the settlement negotiated by the parties was approved by the Administrative Law Judge and Respondent was ordered to pay the agreed-upon sum of $3,500. This approval of settlement is affirmed here.

ORDER

It is ORDERED that the approval of settlement negotiated by the parties in the above-captioned proceeding is hereby AFFIRMED.

It is further ORDERED that Respondent pay the agreed-upon sum of $3,500 within 30 days of the date of this decision.

Forrest E. Stewart
Administrative Law Judge