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SOL (MSHA) V. GRUNDY RED ASH COAL 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 v.	Civil Penalty Proceeding Docket No. VA 79-0029-P A.O. No. 44-05007-03002 V Mine No. 1
GRUNDY RED ASH COAL COMPANY, RESPONDENT	

DECISION

Appearances: James H. Swain, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for the Petitioner
Terry L. Jordan, Esq., Grundy, Virginia,
for Respondent

Before: Judge Stewart

The above-captioned civil penalty proceeding was brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (hereinafter, the Act), 30 U.S.C. 820(a). The Petition for Assessment of Civil Penalty alleged two violations by Respondent. A hearing was held on these matters in Grundy, Virginia, on September 26, 1979. Two exhibits were admitted in regard to Citation No. 318796 and two witnesses were called. Citation No. 00318796 had previously been assessed at \$600 and Citation No. 00318797 had previously been assessed at \$500 by the MSHA office of assessments.

Citation No. 00318796 issued on December 8, 1978, alleging a violation of 30 CFR 75.200. The inspector described the condition or practice at issue as follows:

Roof bolts were being spaced 5 to 8 feet apart lengthwise and crosswise beginning at the faces of the No. 1, 2, and 3 entries and extending outby for a distance of 24 feet in the No. 1 entry, and 40 feet in the No. 2 and 3 entries of the 001 section. Mountain cracks were present in the No. 1 entry and mine roof was being shot down by explosives in the No. 2 entry which was in a roll. The approved roof control plan requires that roof bolts be installed on 4 feet centers lengthwise and crosswise.

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A notice of subsequent action, issued on December 11, 1978, stated: "The mine was flooded by water during the weekend of December 9, and 10, 1978, and had to be pumped before work could begin to abate this citation. Therefore more time is granted."

The citation was terminated by a notice issued on December 18, 1978, which stated: "Roof bolt spacing in the No. 1, 2, and 3 entries of the 001 section was reduced to 4 feet centers lengthwise and crosswise by installing addition roof bolts where required."

Citation No. 00318797, issued on December 8, 1978, alleging a violation of 30 CFR 75.316, stated:

Line brattice or other approved devices was not provided in the No. 1 entry which had been developed 66 feet, the No. 2 entry which had been developed 60 feet, and the No. 3 entry which had been developed 40 feet from the last open crosscut's of the 001 section. The approval ventilation plan requires that line brattice or other approved devices be continuously used from the last open crosscut in crosscuts to the face of the 001 section.

This violation was abated on December 11, 1978, by a notice of subsequent action stating: "Line brattice was installed from the last open crosscut of the No. 1, 2, and 3 entries of the 001 section to within 10 feet of the face of each place."

The testimony regarding the financial condition of the mine along with the statutory criteria to be considered in the assessment of a civil penalty indicated that the operator was \$150,000 in debt and had lost \$300,000 on the mine. Some of the mine equipment had been repossessed and the mining of the 25 inch coal seam was unprofitable. After this testimony concerning the effect of a civil penalty on Respondent's ability to remain in business had been given, the parties entered into further settlement negotiations and agreed upon the payment of \$300 for each violation.

Petitioner moved on the record that the agreement be approved because:

The operator's ability to continue in business would be questionable should the entire amount of the penalties originally assessed for the violations be affirmed and the Respondent ordered to pay. Although the operator was negligent and the gravity was high in both instances, Mine No. 1 was a small mine employing three or four men and producing only 8,750 tons of coal per year. The operator demonstrated good faith in abatement of the violation.

At the conclusion of the hearing the settlement negotiated by the parties was approved by the Administrative Law Judge. The approval from the bench of the settlement agreement is hereby affirmed.

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ORDER

The operator is ordered to pay MSHA the amount of \$600 within 30 days of the date of this order.

Forrest E. Stewart
Administrative Law Judge