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SOL (MSHA) V. MATHIES 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

Civil Penalty Proceeding

Docket No. PITT 79-132-P  
A/O No. 36-00963-03002

v.

Mathies Mine

MATHIES COAL CO.,  
RESPONDENT

DECISION APPROVING SETTLEMENTS  
ORDER OF VACATION  
ORDER TO PAY

The Solicitor has filed a motion to approve settlements for five citations and to approve the vacation of one citation in the above-captioned proceeding.

Citation No. 233436 was issued for an alleged violation of 30 CFR 75.1720(a). According to the Solicitor this citation was issued when an inspector observed a miner driving an electric motor car without adequate eye protection. The Solicitor further states that discussions with the operator indicate that the miner had been provided with the required safety glasses and had them in his pocket at the time the citation was issued. The Solicitor states that since this violation was due primarily to the employee's negligence rather than a lack of diligence on the part of the operator no penalty should be assessed. The Solicitor is correct that the citation should be vacated but he gives the wrong reason. The former Board of Mine Operations Appeals held that where a miner intentionally failed to wear goggles the operator is not guilty of a violation where it has diligently enforced the requirements of the regulation. North American Coal Corp., 3 IBMA 93 at 106-108 (April 17, 1974). This appears to be the case here. Accordingly, there is no violation. See also the recent decision of Administrative Law Judge Koutras in Peabody Coal Company, DENV 77-77-P (August 30, 1978). Lack of negligence is not, and never has been, a basis for vacating a citation.

The Solicitor recommends a settlement of \$150, the originally assessed amount, for Citation 233435 which was for a failure to provide adequate separation between explosives and detonators, a violation of 30 CFR 75.1306. This settlement appears reasonable and is approved.

Settlements are recommended for the remaining four citations in amounts only slightly less than the originally assessed amounts. The

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settlements appear reasonable in light of the gravity of the conditions presented. However, the Solicitor is advised that the fact that the operator abated the violations immediately is not a ground for reduction of the original assessment. Presumably the Assessment Office took into account rapid abatement in determining the original assessments. The Solicitor should not use this reason again as a basis for recommending any reduction. If he does so in the future in any case of mine, the settlement will be disapproved.

ORDER

The operator is ORDERED to pay \$995 within 30 days from the date of this decision. Citation No. 233436 is VACATED.

Paul Merlin  
Assistant Chief Administrative Law Judge