

CCASE:

SOL (MSHA) V. MEALUS, KREIDER, REUSS & ST. JOE ZINC

DDATE:

19800107

TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceedings

Docket No. YORK 79-50-M
A.O. No. 30-01185-05006A

v.

Docket No. YORK 79-51-M
A.O. No. 30-01185-05007A

THADEAUS MEALUS
(SHIFT FOREMAN),
RESPONDENT

Docket No. YORK 79-52-M
A.O. No. 30-01185-05008A

JOHN KREIDER
(MINE SUPERINTENDENT),
RESPONDENT

Docket No. YORK 79-2-M
A.O. No. 30-01185-05003W

ROBERT REUSS,
(GENERAL MINE SUPERINTENDENT),
RESPONDENT

Balmat Mine No. 4 and Mill

ST. JOE ZINC COMPANY,
RESPONDENT

DECISION AND ORDER

The Secretary moves to withdraw the three captioned section 110(c) cases and for approval of a settlement of the section 110(a) case against the corporate operator. The settlement proposed is \$1600.00, or 80% of the \$2,000 initially proposed against the corporate operator.

Based upon an independent evaluation and de novo review of the parties' extensive prehearing submissions, the information furnished at the intensive prehearing conference of November 20, 1979, the Secretary's subsequent investigation and the representations of the parties, I find that because of the passage of time, the unavailability of certain material witnesses, the inability of the inspector to locate the areas involved in the claimed imminent danger with a reasonable degree of precision, the dimming of witnesses' memories of certain claimed admissions as well as the fact that the underlying imminent danger closure order was assessed at only \$295.00 it is unlikely:

1. That the Secretary can sustain the burden of showing that the loose ground condition for which the underlying section 107(a) order (Order No. 210043) was issued was, in fact, an imminent danger;
2. That any of the individuals charged under section 110(c) ordered miners into an imminently hazardous area solely for the purpose of removing mining equipment in light of time cards which show that these miners were primarily engaged in abating the alleged condition;
3. That the hazard presented by the loose roof condition that existed, while arguably serious, created a substantial probability of physical harm to the miners who entered the area to scale the loose ground and to remove mining equipment; or
4. That the violation of the closure order alleged in Citation No. 210051 was the result of knowing or reckless disregard for the order or the law, or was caused by anything more than confusion over the conduct permitted following issuance of the order.

For these reasons, and after taking into consideration the other statutory criteria, I conclude the motion to withdraw and to approve settlement is in accord with the purposes and policy of the act.

Accordingly, it is ORDERED:

1. That the motion to withdraw the charges against Thadeaus Mealus, John Kreider and Robert Reuss be, and hereby is, GRANTED and the petitions for assessment of civil penalties DISMISSED.
2. That the motion to approve settlement of the charge against St. Joe Zinc Company be, and hereby is, GRANTED, and that subject to payment of the amount of the settlement agreed upon, \$1600.00, on or before Monday, January 21, 1980, the petition as to the corporate operator be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge