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SOL (MSHA) V. OKLAHOMA CEMENT
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

PETITIONER

Civil Penalty Proceeding

Docket No. DENV 79-146-PM
A/O No. 34-00028-05001

v.

No. 2 Quarry & Mill

OKLAHOMA CEMENT COMPANY,

RESPONDENT

DECISION APPROVING SETTLEMENT

At the hearing set for 10 a.m. on Wednesday, February 27, 1980, in Dallas, Texas, counsel for Petitioner appeared and announced that a settlement had been reached. Although the settlement agreement had not been signed, Petitioner stated that counsel for Respondent had agreed to the settlement and that the settlement agreement was to be read into the record with Respondent's acquiescence. The transcript of the settlement agreement is, in pertinent part, as follows:

The matter is styled Ray Marshall, Secretary of Labor, U. S. Department of Labor v. Oklahoma Cement Company.

Come now the parties through their respective representatives and submit the following agreement pursuant to Section 110(k) of the Federal Mine Safety and Health Act of 1977, 83 STAT 722, 30 USC 801 (et seq.) hereinafter referred to as the Act.

The alleged violations in this case and the settlement are identified as follows:

No. 00166802 dated 4-11-78 alleging a violation of 30 CFR 56.12-30. The assessed penalty is \$84. The settlement disposition is the Respondent withdraws his notice of contest thereto.

Item number 00166803 dated 4-11-78, an alleged violation of 30 CFR 56.12-34 in the assessed value of \$78. The Respondent withdraws his notice of contest.

Item number 00166804 dated 4-11-78, an alleged violation of 30 CFR 56.14-1, an assessed penalty of \$140. The Petitioner withdraws the citation therein.

Item number 00166085 dated 4-11-78, an alleged violation of 30 CFR 56.14-1, an assessed penalty of \$140. The Petitioner withdraws the citation therein.

Paragraph two: Petitioner has reconsidered and reviewed the size of the operator, previous history of violations, the gravity of the violations and the good faith and the negligence of the operator, all of which factors are set forth in the proposed assessment issued to Respondent, which citation and proposed assessment will be attached to the settlement agreement and have already been attached to the Petitioner's petition.

Upon such review and consideration, the Petitioner and Respondent have agreed to settle this case for a total of \$162, and to pay in full, withdraw or reduce the citations as hereinabove set forth.

Paragraph three: Respondent has paid the agreed proposed penalty of \$162 sought by the Petitioner and, therefore, Respondent hereby withdraws the notice of contest filed in this case.

Paragraph four: Respondent's consent to an entry of a final order of the Commission pursuant to this agreement shall not constitute an admission by Respondent of violation of the Act or the facts underlying the citation proceeding.

The Respondent agrees not to assert this settlement as a defense in any governmental proceeding brought directly under the provisions of the Mine Safety and Health Act.

Paragraph five: Respondent states that Defendant will comply with the Federal Mine Safety and Health Act of 1977, 30 USC 801 et seq.

Paragraph six: Respondent certifies that a copy of any documents or pleadings required by the Federal Mine Safety and Health Review Commission to be posted have been and will be posted.

Paragraph seven: Wherefore, premises considered, the parties respectfully request that this settlement agreement be approved and that this action be dismissed.

That, Your Honor, constitutes the entire text of the settlement agreement.

* * * * *

Your Honor, with regard to the settlement agreement, perhaps an allocation of the penalty amounts would be in order and would be beneficial to you as you consider that settlement agreement.

The allocation of the \$162 penalty is as follows: for Citation No. 00166082, to which citation the Respondent has withdrawn his notice of contest, there is assigned a penalty of \$84.

To Citation 00166083, to which Respondent has withdrawn his notice of contest, there is an assessed penalty of \$78.

Those two figures together will total the \$162 figure.

To Citation No. 00166084, there was an asserted penalty of \$140. To that violation the Petitioner has withdrawn his citation and, hence, withdrawn the penalty assessment as well.

* * * * *

When we sat down and discussed settlement, after considering all of our evidence, it was my determination that the Secretary of Labor could not prove the violations that we have sought to withdraw at this time.

The other \$140 penalty was assessed in Citation 00166085; inasmuch as the Petitioner also withdrew his notice of contest to that--or withdrew the citation in that matter, then the penalty also was withdrawn.

Your Honor, actually what happened was the Respondent agreed to pay the full penalty for those items that he was withdrawing his notice of contest to, and we agreed to completely withdraw the penalty to those items that we were withdrawing.

Furthermore, the Respondent has asserted and it has been confirmed that the violation asserted, not only the one that he has withdrawn the notice of contest to, but also the ones that we have withdrawn, that all of those situations which might have been violations were immediately corrected and abated at the plant site, which we believe evidences extreme good faith on the part of that operator.

I might further add in that regard that the two citations that the Petitioner has withdrawn were matters that had previously been the subject of an Occupational Safety and Health inspection at an earlier time.

The Occupational Safety and Health people have advised the Respondent in this case that the particular situations in question were safe situations and did not constitute a violation of the Occupational Safety and Health Act.

It was at a time subsequent to that that this plant became subject to the Mine Safety and Health Act as opposed to OSHA. And at that time they mistakenly believed that the same standards would apply.

We believe again that exhibits their good faith and their willingness to immediately correct those situations. It suggests that they're very much interested in the safety and the health of their employees.

We further determined that this company is a relatively small operator. It's based upon those facts that the settlement has been entered.

As further support of that settlement, Your Honor, I do have certain notes from the mine inspector that I would be more than happy to submit for the Court's consideration (Exhs. 1 and 2).

* * * * *

Your Honor, the records that I have before me reflect that there are no prior violations under the Mine Safety and Health Act in this matter.

Now, again, I would remind you--the Commission, that this case arose shortly after this particular plant came within the jurisdiction of Mine Safety as opposed to Occupational Safety and Health.

* * * * *

The negotiated settlement was approved at the hearing.

ORDER

The approval of the negotiated settlement at the hearing is AFFIRMED. Respondent is ORDERED to pay the sum of \$162 to MSHA within 20 days of the date of this decision.

Forrest E. Stewart
Administrative Law Judge