

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
SKYLINE TOWERS NO. 2, 10TH FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

7 AUG 1980

SECRETARY OF LABOR, : Civil Penalty Proceeding  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 79-110  
Petitioner : Assessment Control  
: No. 15-10141-03002  
v. :  
: No. 2 Mine  
WATSON & CASSADY COAL COMPANY, :  
Respondent :

DECISION APPROVING SETTLEMENT

Appearances: Stephen P. Kramer, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner;  
Betty Watson, Betsy Lane, Kentucky, for Respondent.

Before: Administrative Law Judge Steffey

When the hearing in the above-entitled proceeding was convened in Pikeville, Kentucky, on June 13, 1980, counsel for the Secretary of Labor requested that I approve a settlement which had been agreed upon by the parties during a conference which had been held by the parties just prior to the convening of the hearing.

Under the settlement agreement, the Secretary would withdraw the Proposal for Assessment of Civil Penalty insofar as it seeks a civil penalty for a violation of section 75.1710 alleged in Citation No. 75015 and respondent would pay a civil penalty of \$25, instead of the penalty of \$52 proposed by the Assessment Office, with respect to the only other violation alleged by the proposal for assessment of civil penalty.

The reason given for withdrawing the proposal with respect to the violation of section 75.1710 alleged in Citation No. 75015 is that the violation was cited in connection with the failure of a battery-powered scoop to have installed on it a cab or canopy as required by section 75.1710. A canopy, however, is not required if the height of the mine is 42 inches or less. The inspector indicated that the scoop did have to travel a road which was less than 42 inches in height for the purpose of obtaining recharged batteries. In such circumstances, counsel for the Secretary concluded that no violation of section 75.1710 had occurred with respect to the operator's failure to install a canopy on the battery-powered scoop.

The reason that counsel for the Secretary agreed to reduce the civil penalty for the violation of section 75.1710 alleged in Citation No. 75014 is that respondent is presently in a difficult financial condition and payment of penalties will at this time have an adverse effect on respondent's ability to continue in business. Respondent leases **its** coal reserves from another company and is required to sell all coal produced at a price of between \$12 and \$15 per ton. Respondent has spent a long time in driving through rock in an effort to reach desirable coal reserves. The bank has been extending credit on the basis of respondent's assurances that coal will soon be available in a profitable amount, but respondent has exhausted the extent to which the bank will extend further credit.

Up to the present time, respondent has not produced more than 2,000 tons of coal in any month and employs only eight or nine miners, including the owner.

Although the violation of section 75.1710 was moderately serious and was associated with a rather high degree of negligence, I find that respondent's small size and its precarious financial condition justify approval of the settlement under which respondent will pay a **penalty** of \$25. Respondent has also asked that it be given a period of 60 days within which to pay the penalty.

WHEREFORE, it is ordered:

(A) The request that the settlement agreement be approved is granted and the settlement agreement reached by the parties is approved.

(B) The request by the Secretary's counsel that he be permitted to withdraw the Proposal for Assessment of Civil Penalty in Docket No. KENT 79-110, to the extent that it seeks assessment of a civil penalty for the violation of section 75.1710 alleged in Citation No. 75015 dated October 6, 1978, is granted and the Proposal is deemed to have been withdrawn to that extent.

(C) Pursuant to the parties' settlement agreement, Respondent, within 60 days from the date of this decision, shall pay a civil penalty of \$25.00 with respect to the violation of section 75.1710 alleged in Citation No. 75014 dated October 5, 1978.

*Richard C. Steffey*  
Richard C. Steffey  
Administrative Law Judge  
(Phone: 703-756-6225)

Distribution:

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Watson & Cassady Coal Company, Attention: Mrs. Betty Watson,  
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