

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  
(703) 756-6225

27 AUG 1980

SECRETARY OF LABOR, : Civil Penalty Proceeding  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. PENN 80-53  
Petitioner : A.O. No. 36-00962-03034 F  
v. :  
: Mine: Vesta #5  
JONES & LAUGHLIN STEEL :  
CORPORATION, :  
Respondent :

DECISION AND ORDER APPROVING SETTLEMENT

Appearances: Barbara Krause Kaufmann, Esq., Office of the Solicitor,  
United States Department of Labor, Philadelphia, Pennsylvania,  
for Petitioner;  
James R. Haggerty, Esq., Pittsburgh, Pennsylvania, for  
Respondent.

Before: Judge Edwin S. Bernstein

This case involved three citations issued pursuant to the Federal Mine  
Safety and Health Act of 1977 (the Act). A hearing on this matter was  
convened on August 7, 1980, in Pittsburgh, Pennsylvania. At that time, I  
issued the following bench decisions:

JUDGE BERNSTEIN:

\* \* \* \* \*

This proceeding involves three citations. At a confer-  
ence with the parties, they have indicated to me that they  
wish to propose settlements of the three citations. Let's  
discuss them one by one.

MS. KAUFMANN: The first citation is No. 235280 issued  
on March 26, 1979, for violation of 30 C.F.R. § 75.200.

This citation states that the operator violated the approved roof control plan. It had set a jack seven and a half feet from the face of the working section rather than no more than five feet as required by drawing number one of the roof control plan.

The purpose of this jack is to allow the operator of either a piece of equipment or an operator's representative making preshift or **onshift** examinations to take ventilation measurements.

This citation was issued during the course of the fatality investigation. However, the condition did not contribute to the roof fall which occurred in the working section.

When the office assessed this violation, it had a misapprehension that there was a connection.

Based on the evidence in further investigations, I recommended the penalty of \$1,000. I thought that was more appropriate than \$2,000.

The operator's negligence exists in the fact that there was a difference of two and a half feet between where the jack was supposed to be and where it was. However, because the jack's placement did not **contribute** to the fatality and because no ventilation measurements were being taken when an inspector was there, I think the proposed assessment of \$1,000 is more appropriate.

JUDGE BERNSTEIN: What is the Respondent's position?'

MR. HAGGERTY: The Respondent is agreeable to that settlement.

The bolters who were bolting the roof that was cited were using an automatic temporary roof support system which alone under the roof control plan is sufficient to support the roof. You do not need to use temporary jacks in the ordinary sense.

The jack which was cited was not placed as a means of supporting the roof. We agree that it did not have any relation to the accident that occurred.

JUDGE BERNSTEIN: Thank you.

I approve the settlement of Citation No. 235280 in the amount of **\$1,000.**

**MS. KAUFMANN:** Your Honor, the next citation involved in this case is No. 620564 also issued for a violation of 30 C.F.R. § 75.200 on March 26, 1979. It was issued during the course of a fatality investigation which resulted from a roof fall. It was discovered that holes were being drilled in by the front beam, a temporary roof support system.

The temporary roof support is a piece of equipment which eliminates the need for the operator to set jacks. This piece of hydraulic equipment fits directly up against the roof and allows the operators of the equipment to then set the permanent supports with the use of the temporary roof support system.

At the time a roof fall occurred in the working section, holes were being drilled in by the front beam of the TRS more than five feet from the face of the section.

Drawing number eight of the roof control plan at paragraph three states as follows: "Roof bolter operators shall not drill holes or install roof bolts at the following locations: A, beyond the beam of the TRS structure unless the distance between the coal face and this beam is equal to less than or five feet."

The activity in which the equipment operators were engaging is a violation of this portion of the roof control plan. The operator was negligent in this case because the equipment operators should have known not to go in by the beam of the TRS. The probability of the occurrence is obviously high as is the gravity since a fatality resulted from this practice.

For these reasons, the Secretary proposes a penalty of \$3,000 for this violation.

**MR. HAGGERTY:** The Respondent supports the settlement proposed by the Secretary.

In support of that settlement, Respondent notes that the inspection report of MSHA does note that Mr. Devecka, the decedent, had been instructed eight times between January 23 and March 12, 1979.

The company believes that certainly with that fact in mind, a finding of high negligence in this case is not correct.

**JUDGE BERNSTEIN:** You agree to the settlement of Citation No. 620564 for \$3,000?

**MR. HAGGERTY:** Yes, sir.

JUDGE BERNSTEIN: Let the record indicate that earlier, I disapproved the proposed settlement of this citation and recommended an amount of \$1,500. Upon consideration of the information provided to me by the parties, I approve the settlement of this citation for \$3,000, the amount recommended by the **MSHA** Assessment Office.

**MS. KAUFMANN:** Finally, we have Citation No. 391028 which was issued on April 5, 1979, for a violation of 30 C.F.R. § 75.200.

During the course of the investigation of the roof fall, the duly authorized representative of the Secretary of Labor questioned ten roof bolters concerning their knowledge of the provisions of the roof control plan as they relate to the temporary roof support system. They found that four of the ten roof bolters questioned were not familiar with the fact that they were not to go to bolt **inby** the beam of the TRS.

This is a violation of Safety Precaution No. 2 of the roof control plan which requires that the operator insure that all persons are familiar with the proper installation procedures.

This is a violation because the operator did not take sufficient steps to insure familiarity with the plan.

However, the Secretary is aware of the fact that each and every bolter who was questioned was given frequent job safety analysis contacts on roof control by the operator.

This mitigates against high negligence in this case. In fact, it should be noted that one of the bolters who was bolting on the day of the fatality was specifically trained at least on one occasion on use of the TRS.

Although this is a serious violation and there is high gravity because of the frequent job safety analysis contacts, the negligence is mitigated. A penalty of \$1,000 is warranted.

**MR. BAGGERTY:** The Respondent concurs with the settlement proposed by the Secretary and has nothing to add on that point.

JUDGE BERNSTEIN: Let the record indicate that I earlier rejected a proposed settlement of the citation for \$750. I approve this proposed settlement in the amount of \$1,000, the full amount recommended by the Assessment Office.

Additionally, with regard to Citation No. 325280, I earlier rejected a proposed settlement in the amount of \$750. The amount recommended by the Assessment Office was \$2,000 for that citation.

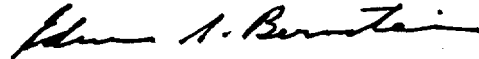
I will issue an Order in accordance with this decision upon receipt of the transcript. \*/

I hereby affirm these bench decisions.

ORDER

Respondent is ORDERED to pay \$5,000 in penalties within 30 days of the date of this Order as follows:

<u>Citation No.</u>	<u>Penalty</u>
235280	\$1,000
620564	3,000
391028	1,000



Edwin S. Bernstein  
Administrative Law Judge

Distribution:

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\*/ The decision is also based upon consideration of information in the parties' pleadings and pre-hearing statements relevant to the other statutory criteria set forth in section 110(1) of the Act.