CCASE: SOL (MSHA) V. GARRCO COAL DDATE: 19800926 TTEXT: Federal Mine Safety and Health Review Commission Office of Administrative Law Judges

| SECRETARY OF LABOR, | Civil Penalty Proceeding |
|----------------------------|-------------------------------------|
| MINE SAFETY AND HEALTH | |
| ADMINISTRATION (MSHA), | Docket Nos. Assessment Control Nos. |
| PETITIONER | KENT 79-37 15-11017-03007 |
| | KENT 79-121 15-11017-03004 V |
| v. | KENT 79-122 15-11017-03005 |
| | KENT 79-123 15-11017-03006 |
| GARRCO COAL COMPANY, INC., | |
| RESPONDENT | Garrco No. 2 Mine |

DECISION

Appearances: William F. Taylor, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner John L. Garrett, Maryville, Tennessee, for Respondent

Before: Administrative Law Judge Steffey

Pursuant to a written notice of hearing dated July 21, 1980, a hearing was held in the above-entitled proceeding on September 4, 1980, in Knoxville, Tennessee, under section 105(d) of the Federal Mine Safety and Health Act of 1977.

The consolidated proceeding involves four Petitions for Assessment of Civil Penalty filed by the Secretary of Labor alleging a total of eight violations of the mandatory health and safety standards by Garrco Coal Company. The Petition in Docket No. KENT 79-37 was filed on June 18, 1979, and seeks assessment of civil penalties for five alleged violations. The Petitions in Docket Nos. KENT 79-121, KENT 79-122, and KENT 79-123 were all filed on May 30, 1979, and each Petition seeks assessment of a civil penalty for one alleged violation.

The issues raised by the four Petitions are whether the violations occurred and, if so, what civil penalties should be assessed, based on the six criteria set forth in section 110(i) of the Act.

The parties entered into stipulations with respect to the six criteria. It was stipulated that respondent operated a very small coal business which produced about 50 tons of coal per day and employed five or six employees. Respondent, as the operator of the No. 2 Mine, is subject to the Act and all regulations promulgated thereunder.

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Respondent agreed that all of the alleged violations had occurred and the parties stipulated as to the criteria of negligence and gravity. It was stipulated that all of the violations were the result of ordinary negligence and that all of the violations were nonserious except for the one violation of section 75.202 in Docket No. KENT 79-123 which was considered to be moderately serious (Tr. 8-18). Respondent demonstrated at least a normal good faith effort to achieve rapid compliance and in some instances, such as for the violation alleged in Citation No. 123661, there was an outstanding effort to achieve rapid compliance (Tr. 19). It was also stipulated that respondent had less than an average history of previous violations (Tr. 9).

The stipulations discussed above support the assessment of small penalties, but testimony and documents regarding respondent's financial condition support a finding that only nominal civil penalties should be assessed in this proceeding. The foregoing conclusion is based on the discussion set forth below.

Respondent was incorporated on August 15, 1977. Respondent was owned by John L. Garrett, H. Pat Wood, and F. Rodney Lawler. Mr. Garrett owned 50 percent of the stock and the other two men owned 25 percent each. Respondent's efforts to produce coal at a profit failed so completely that it was forced to discontinue in business after about 2 years of operation and the corporate charter was dissolved in 1978 (Tr. 25).

Respondent's income tax returns for the period of its operation were introduced in evidence as Exhibits A and B. The 1977 return covers the period from August 15, 1977, to February 28, 1978, and shows that respondent lost \$31,561 during that period even though respondent's stockholders and officers received no dividends, salary, or other compensation. The 1978 return covers the period from March 1, 1978, to February 28, 1979, and shows that respondent lost \$16,738 during its second year of operation. Again respondent's stockholders received neither dividends nor any other compensation, despite the fact that Mr. Garrett worked full time at trying to produce coal at a profit.

In addition to being unable to operate economically, respondent suffered the misfortune of having its only scoop stolen. The insurance company paid all but \$5,000 of the amount which respondent still owed on the scoop. It was necessary for respondent to pay the remaining \$5,000 due on the scoop. Respondent was unable to purchase another scoop. Respondent tried to continue producing coal by renting a scoop at the rate of 75 cents for each ton of coal which was mined. Respondent also paid a fee of \$500 per month to rent a roof-bolting machine on which respondent had to pay all expenses associated with maintaining the roof-bolting machine in operable condition (Tr. 22-23).

Mr. Garrett had never had any experience in the coal business prior to undertaking the venture described above. Mr.

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Garrett emphasized at the hearing that no personal injuries of any kind occurred while he was in the

coal business (Tr. 22). Respondent had no funds in the bank when it discontinued in business and any penalties which may be assessed in this proceeding will have to be paid from Mr. Garrett's personal income which he now receives as a pilot for an airplane which is used in making chartered flights (Tr. 6; 25).

I find that the facts discussed above warrant assessment of only nominal penalties of \$1 for each of the eight violations involved in this proceeding. Respondent's efforts to produce coal ended in a financial loss to himself and the other two men who advanced capital for the venture. No miner received any personal injuries while employed by respondent. Mr. Garrett was not cited for any serious violations while he was in business and large penalties would be unwarranted in any event. Additionally, large penalties, even if justified, would have no deterrent effect for a person who is out of business and who has no intention of resuming any mining activities.

WHEREFORE, it is ordered:

Within 30 days from the date of this decision, Garroo Coal Company, Inc., shall pay civil penalties totaling \$8.00 for the violations which are listed below:

Docket No. KENT 79-37

| Citation No. 123711 11/17/78 | 75.1725(a)\$ | 1.00 |
|--------------------------------|--------------|------|
| Citation No. 123712 11/17/78 | 77.1301(a) | 1.00 |
| Citation No. 123756 12/18/78 | 77.1301(a) | 1.00 |
| Citation No. 123757 12/18/78 | 77.904 | 1.00 |
| Citation No. 123758 12/18/78 | 75.1711-3 | 1.00 |
| Total Civil Penalties Assessed | | |
| in Docket No. KENT 79-37 | | 5.00 |

Docket No. KENT 79-121

Citation No. 124269 5/16/78 75.200.....\$ 1.00

Docket No. KENT 79-122

Citation No. 123660 10/11/78 75.200.....\$ 1.00

Docket No. KENT 79-123

Citation No. 123661 10/11/78 75.202.....\$ 1.00

Total Civil Penalties Assessed in This Proceeding....\$ 8.00

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

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