

CCASE:
SOL (MSHA) V. GARRCO COAL
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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.

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

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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, Garrco 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
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Docket No. KENT 79-122

Citation No. 123660	10/11/78	75.200.....	\$ 1.00
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Docket No. KENT 79-123

Citation No. 123661	10/11/78	75.202.....	\$ 1.00
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Total Civil Penalties Assessed in This Proceeding....\$ 8.00

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