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SOL (MSHA) V. SHIRLEY'S SAND  
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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. CENT 80-85-M

A/O No. 34-01207-05001

v.

Shirley's Sand Pit

SHIRLEY'S SAND, INC.,

RESPONDENT

DECISION

Appearances: Patricia D. Keane, Esq., Office of the Solicitor,  
U.S. Department of Labor, Dallas, Texas, for Petitioner  
Kenneth Dewbre, Esq., Oklahoma City, Oklahoma,  
for Respondent

Before: Judge Stewart

The above-captioned case is a civil penalty proceeding  
brought pursuant to section 110(a)(FOOTNOTE 1) of the Federal Mine  
Safety and Health Act of 1977

~2923

(hereinafter, the Act), 30 U.S.C. 820(a). At the hearing in these matters in Oklahoma City, Petitioner called four witnesses and introduced three exhibits.

Citation No. 167118 which was issued on July 19, 1979, by MSHA inspector M. H. Smith cited a violation of 30 C.F.R. 56.9-3 and stated that "The 645 Allis Chalmers End Loader has very little brake at this time. Will not stop with a load." Order of Withdrawal No. 166707, issued on August 6, 1979, stated that "the brakes in the Allis Chalmers Front End Loader were still not repaired."

30 C.F.R. 56.9-3 provides: Mandatory. Powered mobile equipment shall be provided with adequate brakes.

At the outset of the hearing, the parties entered into the following stipulations:

(1) Mr. Shirley knew that the brakes on the loader were not working.

(2) There is no history of prior paid violations for this mine.

(3) For the April through June quarter of the year preceding the citation, 1979, \* \* \* 1,350 man-hours had been worked at the mine.

(4) For the year preceding the citation, 900 loads had been sold for a dollar volume business of approximately \$44,000 a year.

At the end of Petitioner's case, the parties announced that they had reached the following settlement agreement:

The parties have agreed that Mr. Shirley will pay the \$275 fine in this case within 30 days of the date of the order and that he is admitting guilt only in this instance and jurisdiction only in this instance; that, while this case may be used as past history should another violation occur, he is not admitting jurisdiction of the Act over him or his business for any other purposes. Mr. Shirley has agreed that he will not use the loader while the brakes are defective in the operation of Shirley Sand, Incorporated, or in the operation of the sand pit.

The settlement agreement was approved at the hearing and Respondent was ordered to pay Petitioner the sum of \$275 within 30 days of the date of the order.

Based on an independent review and evaluation of the record, I find the settlement proposed is in accord with the provisions of the Act.

ORDER

The approval of the settlement negotiated by the parties in the above-captioned proceeding is AFFIRMED.

Respondent is ORDERED to pay(FOOTNOTE 2) the amount of \$275 within 30 days of the date of this order, if it has not already done so.

Forrest E. Stewart  
Administrative Law Judge

~FOOTNOTE\_ONE

1 Sections 110(i) and (k) of the Act provide:

"(i) The Commission shall have authority to assess all civil penalties provided in this Act. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this Act, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

"(k) No proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission. No penalty assessment which has become a final order of the Commission shall be compromised, mitigated, or settled except with the approval of the court."

~FOOTNOTE\_TWO

2 Section 110(j) of the Act provides:

"(j) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation occurred or where the operator has its principal office. Interest at the rate of 8 percent per annum shall be charged against a person on any final order of the Commission, or the court. Interest shall begin to accrue 30 days after the issuance of such order."