

CCASE:
SOL (MSHA) V. KESSLER COALS
DDATE:
19801021
TTEXT:

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. WEVA 80-499
A.O. No. 46-03775-03006

v.

Kessler Preparation Plant

KESSLER COALS, INC.,
RESPONDENT

DECISION AND ORDER APPROVING SETTLEMENT

Petitioner filed a motion to approve settlement in this matter for \$56. The amount proposed by the Assessment Office was \$78. The motion contained an analysis of the six criteria in Section 110(i) of the Federal Mine Safety and Health Act of 1977 (the Act).

The citation in question was issued for an alleged violation of 30 C.F.R. 77.1605(m), which provides: "Roadbeds, rails, joints, switches, frogs, and other elements on railroads shall be designed, installed, and maintained in a safe manner consistent with the speed and type of haulage." The citation alleged that rails and joints on the No. 1 loadout track were not being maintained in a safe manner.

The citation also noted that this track was owned and maintained by the C and O Railroad Company. The motion stated that Respondent's negligence was overestimated by the Assessment Office. Apparently, an agreement between the miners' union and the train workers' union prohibited mine workers from maintaining the rails and joints on this track. Therefore, Respondent's employees could not maintain the track despite the fact that Respondent was ultimately responsible for the track. The motion asserted that Respondent communicated often with the railroad company concerning any safety problems on the tracks, including the one which resulted in the issuance of this citation. Also, whenever Respondent felt that the health and safety of its employees were being affected by a problem with the track, those employees were removed from the area.

The motion concluded that "the operator was not as in control of the condition as originally determined," and that while this factor does not eliminate Respondent's negligence, it does mitigate it. Based upon this explanation of the situation at the scene of the violation, I approve the recommended settlement.

ORDER

Respondent is ORDERED to pay \$56 in penalties within 30 days

of the date of this Order.

Edwin S. Bernstein
Administrative Law Judge