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SOL (MSHA) V. CONSOLIDATION COAL
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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. WEVA 80-352 A/O No. 46-01455-03039I
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v. Osage No. 3 Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT
AND
ORDERING PAYMENT OF CIVIL PENALTY

Appearances: Corvette Rooney, Esq., Office of the Solicitor, U.S.
Department of Labor, Philadelphia, Pennsylvania,
for Petitioner Samuel P. Skeen, Esq., Consolidation
Coal Company, Pittsburgh, Pennsylvania, for Respondent

Before: Judge Cook

A proposal for a penalty was filed pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (Act) in the above-captioned proceeding. An answer was filed, a prehearing order was issued, and the case was scheduled for hearing. On August 25, 1980, Petitioner filed a motion requesting approval of a settlement and for dismissal of the proceeding. On August 28, 1980, an order was issued requiring Petitioner to furnish certain additional information necessary to properly evaluate the proposed settlement. Certain additional information was filed on September 9, 1980. A copy of the accident investigation report was filed at the hearing on September 18, 1980, and the matter was continued to permit further study of the report.

Information as to the six statutory criteria contained in section 110 of the Act has been submitted. This information has provided a full disclosure of the nature of the settlement and the basis for the original determination. Thus, the parties have complied with the intent of the law that settlement be a matter of public record.

~3185

The proposed settlement is identified as follows:

Citation No.	Date	30 C.F.R. Standard	Assessment	Settlement
630835	8/21/79	75.512	\$1,000	\$ 800
630873	8/21/79	75.1403	500	500
		Totals:	\$1,500	\$1,300

Petitioner advances the following reasons in support of the proposed settlement:

* * * * *

3. On August 21, 1979 there was an accident at the Osage No. 3 Mine in which four miners were injured when a trip of loaded cars and a locomotive drifted out onto the main haulageway from a side-track and collided with a personnel carrier. None of the men received any permanent or serious injuries. As a result of that accident an MSHA investigation was conducted. Two citations were issued during the course of that investigation. This settlement agreement applies to one of the two citations.

The Respondent has agreed to tender the full amount of the original assessment, i.e. \$500, in citation No. 0630873. The six statutory criteria have been considered and the circumstances surrounding the issuance of the citation have been reviewed. Citation No. 0630873 (30 CFR 75.1403) was issued because there was a violation of Safeguard Notice No. 1LA (6-16-76), which required that positive acting stop blocks or derails be used on all parked track-haulage equipment. The violation was one of the causes of the haulage accident and caused injuries to four employees. The violation did not result from the operator's negligence. The miners who parked the train discovered the defective stop block and reported it to management immediately. This was done a short time before the time of the accident. Thus, there was no way management could have known of the violation. There is no evidence that management had prior notice of the violation or that the violation had existed for a sufficient period of time so that management should have known about it.

Citation No. 0630835 (30 CFR 75.512) was issued because the weekly electrical examinations of five different locomotives was inadequate. The violation was one of the causes of the accident in which four employees were injured. The special assessment sets forth that the operator was negligent because the examination of the brakes on the locomotives had been inadequate, i.e., the fact that the brakes were defective

~3186

was overlooked or disregarded. However, further investigation has revealed that the operator's records indicated that the brakes were being checked weekly and no inadequacy had been noted. The inspector, who issued the citation, noted that the operator could not have known of this violation. Management personnel would not have had occasion to operate these motors, and if a problem was not reported, management would be unaware of it. This factor does not eliminate the operator's negligence; it does however slightly mitigate it. A reduction in penalty to \$800 from \$1000 is warranted and should be approved.

The violations were abated within a reasonable period of time.

The reasons given above by counsel for Petitioner for the proposed settlement have been reviewed in conjunction with the information submitted as to the six statutory criteria contained in section 110 of the Act. After according this information due consideration, it has been found to support the proposed settlement. It therefore appears that a disposition approving the settlement will adequately protect the public interest.

ORDER

Accordingly, IT IS ORDERED that the proposed settlement, as outlined above, be, and hereby is, APPROVED.

IT IS FURTHER ORDERED that Respondent, within 30 days of the date of this decision, pay the agreed-upon penalty of \$1,300 assessed in this proceeding.

John F. Cook
Administrative Law Judge