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SOL (MSHA) V. RED ASH SMOKELESS 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. VA 80-137
A.O. No. 44-05144-03016V

v.

Mine No. 1

RED ASH SMOKELESS COAL CORP.,
RESPONDENT

DECISION AND ORDER

These two serious roof control violations were initially assessed at \$2,500. The parties propose a settlement in the amount of \$2,000. Based on an independent evaluation and de novo review of the circumstances, I find the amount of the settlement proposed is, insofar as the corporate operator is concerned, in accord with the purposes and policy of the Act. I wish to record once more my vigorous disagreement with the abuse of prosecutorial discretion involved in MSHA's failure and refusal to initiate penalty proceedings against the individuals responsible for these violations. Section 2(g) of the Mine Safety Law, 30 U.S.C. 801(g)(2), specifically provides that it is the purpose of the law "to require that ... every miner" employed in a mine "comply with [the mandatory safety] standards."

It is my firm belief that the grant of immunity conferred on the workforce by MSHA is a violation of this provision and encourages disrespect for the law. I note that the carnage in the mines has sharply increased and that in one recent thirty day period 22 miners were killed, or almost one for every working day. Mr. Lagather is quoted as saying he doesn't "have any concrete reason to point to". I suggest he does, and that lax enforcement against miners who commit safety violations is a very "concrete" reason.

If I thought it would change the administration's policy I would approve this settlement but suspend payment of the penalty unless and until appropriate action is taken against the individuals who bear culpable responsibility for the violations in question. I recognize, however, that we are in a period of transition and that until that is resolved little change in this misguided policy can be hoped for.

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Accordingly, it is ORDERED that the motion to approve settlement be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay the penalty agreed upon, \$2,000, on or before Monday, December 1, 1980, and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge