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SOL (MSHA) v. FREEMAN COAL
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Federal Mine Safty and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceeding

Docket No. LAKE 81-91
A.O. No. 11-02236-03063V

v.

Crown No. 2 Mine

FREEMAN UNITED COAL MINING
COMPANY, A DIVISION OF
MATERIAL SERVICE CORP.,
RESPONDENT

DECISION

Appearances: Rafael Alvarez, Esq., U.S. Department of Labor, Office
of the Solicitor, Chicago, Illinois, for the Petitioner;
Harry M. Coven Esq., Chicago, Illinois, for the Respondent.

Before: Judge Koutras

Statement of the Case

This proceeding concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, charging the respondent with one alleged violation of mandatory safety standard 30 CFR 75.200. Respondent filed a timely answer contesting the citation and the matter was scheduled for hearing on May 20, 1981, in Terre Haute, Indiana, along with other cases involving these same parties. However, prior to the commencement of the hearing, the parties advised me that they had agreed to a settlement of the dispute, and they were afforded an opportunity to present their joint settlement proposal on the record for my consideration. The citation, initial assessment, and proposed settlement amount are as follows:

Citation No.	Date	Proposed Assessment	Settlement
1005827	11/10/80	\$2,000	\$1,500

Discussion

The citation in this case was issued after the inspector found that certain room and entry intersection diagonals and crosscuts were driven

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for distances wider than those provided for by the respondent's approved roof control plan. In support of the proposed settlement, petitioner stated that the citation in question was issued approximately one month before respondent's new roof control plan was approved, and that the roof area in question was considered to be in very good condition and was fully roof-bolted. Under the new roof control plan, the area cited as being driven too wide would only have exceeded the plan requirements by approximately 18 inches, and the conditions cited did not result in any accidents or injuries (Tr. 4-9).

In view of the foregoing circumstances, and taking into account all of the statutory civil penalty criteria found in section 110(i) of the Act, the parties were in agreement that the proposed settlement is reasonable and they requested my approval.

Conclusion

After careful review and consideration of the pleadings, arguments, and information of record in support of the proposed settlement, I conclude and find that it is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the settlement is APPROVED.

Order

Respondent IS ORDERED to pay a civil penalty in the amount of \$1,500, in satisfaction of the citation in question within thirty (30) days of the date of this decision and order, and upon receipt of payment by the petitioner, this proceeding is DISMISSED.

George A. Koutras
Administrative Law Judge