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SOL (MSHA) V. PARAMONT MINING  
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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

v.

PARAMONT MINING CORPORATION,  
RESPONDENT

Civil Penalty Proceeding

Docket No. VA 81-45  
A.O. No. 44-05222-03014 V

No. 7 Underground Mine

DECISION

Appearances: Lawrence W. Moon, Trial Attorney, U.S. Department of Labor,  
Arlington, Virginia, for the petitioner; Galen C. Thomas,  
Esquire, New York, New York, for the respondent;

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), proposing civil penalty assessments for one alleged violation of 30 CFR 75.200.

Respondent filed a timely answer in the proceeding, and after extensive discovery, including an interlocutory appeal taken by the respondent with respect to one of my pretrial rulings on a motion for summary partial decision, which was subsequently rejected by the Commission, a hearing was convened at Wise, Virginia, on September 9, 1981, and the parties appeared and participated fully therein. During a brief informal pretrial conference, the parties advised that they proposed to settle the dispute, and they were afforded an opportunity to present their arguments in support of the proposed settlement disposition of the matter on the record for my consideration pursuant to Commission Rule 29 CFR 2700.30.

Discussion

In support of the proposed settlement disposition of this case, petitioner submitted full arguments and information concerning the six statutory criteria found in section 110(i) of the Act, including a discussion of the facts and circumstances surrounding the citation in question. In this regard, the parties stipulated to the following:

1. The respondent owns and operates the subject mine and is subject to the jurisdiction of the Act and the Commission.
2. The citation properly charged conditions or practices which were in violation of the approved roof control plan and mandatory safety standard 30 CFR 75.200.
3. The subject citation was properly served on the respondent by MSHA inspector Nolan White.
4. The penalty assessed for the subject citation will not adversely affect respondent's ability to continue in business.
5. Respondent's history of prior citations is not such as to warrant an increase or reduction in the proposed civil penalty assessment made in this case.
6. Respondent's annual coal production is approximately 400,000 tons, and respondent employs 75 miners underground at the mine in question.
7. The conditions cited by the inspector were rapidly abated and corrected by the respondent when they were brought to respondent's attention.

The citation issued by the inspector in this case, No. 0680403, was issued on November 16, 1980, and charges the respondent with a violation of 30 CFR 75.200, for an asserted failure by the respondent to follow its approved roof control plan. The citation was issued after the inspector found that approximately 20 roof bolts used to support a roof area which had fallen were 18 inches in length rather than 42 inches as required by the approved mine roof control plan. In support of the proposed settlement disposition for this citation, the parties agreed to the following:

1. Section foreman Charles Wyatt was aware of the fact that the short roof bolts were installed, and in fact may have personally installed them himself.
2. The installation of the bolts in question were contrary to the roof control plan as well as company policy, and except for Mr. Wyatt, no one in mine management was aware that they had been installed until they were discovered by MSHA inspector Nolan White on December 16, 1980.
3. The presence of the short roof bolts was not visibly noticeable upon normal visual examination of the roof area by someone standing in the entry. The existence of the short bolts was called to MSHA's attention by an informant, and was subsequently confirmed by Inspector White upon closer examination of the roof area in question.

4. Although the roof area in question was in an area designated as an escapeway from August 22 to October 20, 1980, and was subject to weekly examinations subsequent to October 20, 1980, and up to and including December 16, 1980, the area was not a designated escapeway during this period of time.

5. Although the affected roof was not a face area or working section, it was an "active workings" of the mine. However, the roof was in fact supported by cribs as an additional means of roof support.

6. Mr. Wyatt was discharged from his employment with the respondent prior to the discovery of the installation of the short roof bolts and prior to their discovery by MSHA and mine management. Mr. Wyatt was subsequently indicted by a Federal grand jury for the Western District of Virginia for the intentional installation of the short roof bolts and has entered a guilty plea based on one criminal count returned by the jury.

7. At the time the short roof bolts were discovered, mine employees were not in the roof area in question because the inby area had been temporarily abandoned.

#### Conclusion

After careful review of the pleadings, arguments, and submissions submitted by the parties, including the oral arguments advanced by counsel for the petitioner at the hearing in support of the proposed settlement disposition of this matter, I concluded and find that the settlement is in the public interest and should be approved. Although it is clear that a mine operator is responsible for the acts of his management personnel, in this case it also seems clear to me that the conditions cited resulted from the unauthorized acts of a shift foreman without the knowledge of mine management and contrary to company policy. Coupled with the fact that respondent took immediate and decisive action in correcting the cited conditions and discharged the responsible party, these factors may be considered by me in mitigating any civil penalty assessed for the violation in question. Under the circumstances, I conclude that the proposed settlement is reasonable, and pursuant to Commission Rule 30, 29 CFR 2700.30, it is APPROVED.

#### ORDER

Respondent IS ORDERED to pay a civil penalty in the settlement amount of two-hundred dollars (\$200), in satisfaction of the citation in question within thirty (30) days of this decision and order, and upon receipt of payment by the petitioner, this case is dismissed.

George A. Koutras  
Administrative Law Judge