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SOL (MSHA) V. INVERNESS 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	Civil Penalty Proceeding Docket No. LAKE 81-45-M A.O. No. 11-00791-050091
v.	
INVERNESS MINING COMPANY, RESPONDENT	Minerva Mine No. 1

DECISION AND ORDER

The parties move for approval of a settlement of a non-fatal roof fall accident case alleging a violation of 30 C.F.R. 57.3-22. This requires that miners examine and test the back, face, and rib of their working places at the beginning of each shift and frequently thereafter and that loose shale be taken down or adequately supported before any other work is done.

The accident investigation established that at the beginning and throughout the shift the miners and their supervisor were at all times aware of the fact that there was questionable shale at the back of the drift, but that due to the pressure to catch up with production the miners and their supervisor decided to take a chance that it could be worked without testing. That this was in accord with the policy of top management was established by the angry reaction of the plant manager, John Kerns, and the superintendent, Bill Hobbs, to the inspector's decision to issue the citation. It is just this "take a chance" attitude toward safety that leads to so many fatal and disabling accidents. Every neophyte in the mines knows the rule that every time a miner enters a new work area he should make a visual and vibration test before starting work. Here experienced miners were encouraged to ignore sound safety practices because the top management of a new operation was pushing for production.

Top management's attitude alone justified the penalty of $2500 originally proposed. Because of the effort made to muddy the waters, MSHA proposed a settlement of $1,000 or 40% of the amount initially proposed. The trial judge rejected this and suggested $1500. This proposal was accepted by counsel for the operator on October 31, 1981.

Based on an independent evaluation and de novo review of the circumstances, I reluctantly conclude that payment of the reduced penalty can be justified only on the ground that this is a new operation and this was the first violation of the standard cited. Nevertheless, it is my opinion that this operation bears close scrutiny and that unless top management's attitude changes serious violations will continue to occur. I will expect that the next time around the Solicitor will recognize that miners who are induced to contradict their contemporaneous statements are still reliable witnesses of what actually transpired and that little weight is to be accorded self-serving afterthought statements elicited under pressure from the operator.

Accordingly, it is ORDERED that the motion to approve settlement, as amended, be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay the penalty agreed upon, $1500, on or before Friday, November 27, 1981, and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge