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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 81-550 A.O. No. 46-04266-03019V
v.	
BULL RUN MINING COMPANY, INC., RESPONDENT	Meredith Mine

DECISION APPROVING SETTLEMENT

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 a civil penalty assessment for one alleged violation of mandatory safety standard 30 CFR 75.200.

Respondent filed a timely answer and notice of contest and the case was scheduled for hearing at Washington, Pennsylvania, January 14, 1982. However, by motion filed November 18, 1981, the petitioner seeks approval of a proposed settlement of $350 for the citation which was initially assessed at $750.

Discussion

In support of the proposed settlement disposition of this case, petitioner has 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. Petitioner states that Citation No. 856023 was issued on March 26, 1981, because the respondent failed to comply with the roof control requirement that roof bolts be installed within 5 feet of the rib. In the 1 right section, in the crosscut along the belt conveyor entry, the crew had cut an area along the left rib for a distance of 18 feet and no support had been installed. The distance from the rib to the installed bolts was 6 feet 10 inches, 6 feet 7 inches, 7 feet 4 inches, and 8 feet 2 inches. Petitioner states further that a reduction in penalty would be appropriate in light of the following facts.

The cited area had been originally cut and bolted according to the roof control plan; however, on March 25, 1981, it was discovered that the equipment was too wide to move into the area. Thus, a cut was made in the corner resulting in the cited wide areas from the last row of bolts.

Except for this last row of bolts the entire crosscut had been properly bolted. The crew, after making the cut, cleaned the area. However, before the crew could bolt the shift ended.

The next day the crew immediately started cutting in another area of the mine, and at the time this violation was observed no one had been under the inadequately supported roof. Additionally, the cited roof could not be pulled down, and in order to abate, the roof was pinned up with additional bolts, and it was not likely that the roof would have fallen in this area. Petitioner concludes that these factors reduce the gravity of the violation, and that the probability of a roof fall was certainly less than probable in light of the roof's condition. Petitioner also asserts that the cited condition presented no danger of an immediate roof fall, that no fatality could reasonably be expected to occur as a result of this condition since no miners were exposed to this unsupported area, because once the crew finished work at the cited area on March 25, 1981, they commenced work in another area of the mine the next day.

Although petitioner concedes that the respondent was negligent in permitting the cited conditions to exist, it argues that any negligence is mitigated by the fact that the conditions cited had not existed for an entire shift as previously believed since the condition were cited approximately 2 hours and 50 minutes into the shift.

With regard to the size and scope of the respondent's mining operation, petitioner states that the respondent operates a very small mine, employing approximately 16 miners on one daily production shift, and that its annual coal production is 77,830 tons. Respondent's history of prior violations for a two year period prior to the date the instant citation issued consists of 57 prior assessed violations, but the petitioner does not assert that any of these were for prior violations of section 75.200.

Conclusion

After careful review and consideration of the pleadings, arguments, and information of record in support of the motion to approve 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 motion is GRANTED and the settlement is APPROVED.

ORDER

Respondent IS ORDERED to pay a civil penalty in the settlement amount of $350 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 MSHA, this proceeding is DISMISSED. The scheduled hearing is CANCELLED.

George A. Koutras
Administrative Law Judge

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~FOOTNOTE_ONE

a. Lest there by any misunderstanding as a result of recent conclusions made by one of my learned colleagues in a recent decision of November 17, 1981, (Docket Nos. WEVA 81-341-R; WEVA 81-441), stating that the Commission's "trial judges" have been admonished to adopt a "wise" rather than "zealous" attitude toward mine safety enforcement, my decision approving the settlement in this case is based on the record before me and I have not been the recipient of any such "admonishments".