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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. WEST 82-114-M
A/O No. 42-01150-05017

v.

Lucky Strike Mine

PLATEAU RESOURCES LIMITED,
RESPONDENT

DECISION

After denial of the operator's interlocutory appeal from the trial judge's decision of March 30, 1983, 5 FMSHRC 605, this matter was set for an evidentiary hearing in Salt Lake City on May 19, 1983.

When the operator's presentation created a credibility gap that could not be resolved without additional witnesses, the trial judge ordered production of two additional eyewitnesses. After inquiry, counsel for the operator advised these witnesses were no longer employed by the operator and had accepted other employment at points distant to the place of hearing.

At the suggestion of the trial judge the hearing was recessed to afford the parties an opportunity to discuss settlement. Thereafter, the parties jointly moved to withdraw the challenge to the validity of the citation and to settle the explosives violation charge by increasing the amount of the penalty initially proposed from \$32 to \$500.

After a consideration of the parties' motion in light of the record made, the trial judge granted the motion and ordered the operator to pay the amount of the penalty agreed upon, \$500, within ten days.

Accordingly, it is ORDERED that the bench decision issued May 19, 1983, be, and hereby is, CONFIRMED, that the operator pay the agreed upon penalty, \$500, on or before May 31, 1983, and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge