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SOL (MSHA) V. BLACK BEAUTY COAL  
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TTEXT:

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 83-53  
A. C. No. 12-01897-03501

v.

Arlen No. 1 Mine

BLACK BEAUTY COAL COMPANY,  
INC.,  
RESPONDENT

DENIAL OF MOTION TO WITHDRAW PROPOSAL FOR PENALTY  
ORDER TO SUBMIT INFORMATION

The Solicitor has filed a motion to withdraw his petition for civil penalties for the 8 violations involved in this matter. As grounds for this motion, the Solicitor recites that he has received a check from the operator in the amount of \$160 in full payment for the 8 penalties. The Solicitor further states that the operator has represented that it desires to withdraw its contest of the proposed penalties and that the full payment of these penalties is a satisfactory and appropriate resolution of this controversy. The citations were issued for a variety of conditions, including lack of audible warning devices, lack of seat belts, and inoperative parking brakes on various types of equipment.

The Solicitor does not refer to any MSHA regulations in support of his motion but rather relies upon the operator's payment, its wish to withdraw its contest, and the allegation that the payment already made is a satisfactory and appropriate resolution of this matter. It appears from the assessment sheet that all of these violations were so-called "single penalty assessments". Such assessments are made pursuant to section 100.4 of the regulations of the Mine Safety and Health Administration, 30 C.F.R. 100.4, which provides for the assessment of a \$20 single penalty for a violation which MSHA believes is not reasonably likely to result in a reasonably serious injury or illness.

I am unable to approve the motion to withdraw on the basis of the present record. In my opinion, \$20 is a nominal penalty which indicates, among other things, a lack of gravity. I have been told nothing about gravity, negligence, or any of the other statutory factors which would enable me to make an informed judgment as to proper penalty amounts for these citations. Certainly, each citation on its face does not indicate a lack of gravity.

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The MSHA regulation in question is not binding upon the Commission. Indeed, it is not even relevant. Moreover, the fact that the operator has tendered payment cannot preclude the Commission from acting in accordance with the governing statute.

The Act makes very clear that penalty proceedings before the Commission are de novo. The Commission itself recently recognized that it is not bound by penalty assessment regulations adopted by the Secretary but rather that in a proceeding before the Commission the amount of the penalty to be assessed is a de novo determination based upon the six statutory criteria specified in section 110(i) of the Act and the information relevant thereto developed in the course of the adjudicative proceeding. Sellersburg Stone Company, 5 FMSHRC 287 (March 1983). Indeed, if this were not so, the Commission would be nothing but a rubber stamp for the Secretary.

The fact that MSHA may have determined that this violation is not "significant and substantial" as that term presently is defined by the Commission, is not determinative or even relevant in these proceedings. I agree with Administrative Law Judge Broderick that whether a cited violation is checked as significant and substantial is per se irrelevant to the determination of the appropriate penalty to be assessed. United States Steel Mining Co., Inc., 5 FMSHRC 934 (May 1983), PDR granted June 22, 1983.

Regardless of the Secretary's regulations, once this Commission's jurisdiction attaches we have our own statutory responsibilities to fulfill and discharge. This can only be done on the basis of an adequate record.

ORDER

In light of the foregoing, it is Ordered that the Solicitor's motion to withdraw be Denied.

It is further Ordered that within 30 days from the date of this order the Solicitor file information adequate for me to determine whether the proposed penalties are justified and settlements warranted. Otherwise, this case will be assigned and set down for hearing on the merits.

Paul Merlin  
Chief Administrative Law Judge