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SOL (MSHA) V. RALPH BALL
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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. KENT 83-139
A.C. No. 15-13339-03502

v.

Pruden Mine

RALPH BALL, INC.,
RESPONDENT

DECISION

Appearances: Mary Sue Ray, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for Petitioner Ralph Ball, pro se, Lafollette,
Tennessee, for Respondent

Before: Judge Koutras

Statement of the Case

This proceeding concerns a proposal for assessment of civil penalty filed 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), charging the respondent with one violation of mandatory safety standard 30 C.F.R. 77.506, and one of 30 C.F.R. 75.200. Respondent contested the citations and requested a hearing. The case was heard in Knoxville, Tennessee, Wednesday, August 10, 1983.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, Pub. L. 95-164, 30 U.S.C. 801 et seq.
2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).
3. Commission Rules, 29 C.F.R. 2700.1 et seq.

Issues

The principal issues presented in this proceeding are (1) whether respondent has violated the provisions of the Act and implementing safety regulation as alleged in the proposal for assessment of civil penalty filed in this proceeding, and, if so, (2) the appropriate civil penalty that should be assessed against the respondent for the alleged violation based upon the criteria set forth in section 110(i) of the Act.

Stipulations

The parties stipulated that the respondent is subject to the Act, that I have jurisdiction to hear and decide the case, that the respondent is a small mine operator, and that the conditions cited by the inspector were timely abated. In addition, Mr. Ball testified that the subject mine is closed, that it was operated only for several months, and that at the time it was active he employed five miners, including himself. Mr. Ball also indicated that he is still in the mining business and operates a small mine elsewhere. This information was confirmed by MSHA Inspector Brock who was present at the hearing.

Discussion

Section 104(a) Citation No. 2057746, December 3, 1982, cites a violation of mandatory safety standard 30 C.F.R. 75.200, as follows:

The approved roof control plan was not being complied with in that temporary roof support (Roof Jacks) was not provided for the Willcox roof bolter.

Section 104(a) Citation No. 2057747, December 3, 1982, cites a violation of mandatory safety standard 30 C.F.R. 77.506, as follows:

Overload and hot circuit protection was not provided for the 220VAC electric drill. 1.4/3 cable and fuses were wired over.

Respondent has conceded the fact of violations in this case and he does not dispute the conditions or practices cited by the inspector on the face of the citations. His principal contention is that since the mine had not become fully operational at the time of the inspection and subsequently ceased operation, the violations were not significant and substantial. Inspector Brock confirmed that this was in fact the case. Given these circumstances, the parties agreed to settle the matter without

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the need for a full hearing, and after giving both the respondent and the inspector an opportunity to be heard, I rendered a bench decision approving a proposed settlement of the matter.

Taking into account all of the statutory criteria found in section 110(i) of the Act, and the fact that the respondent closed the mine within several months after the inspection, petitioner recommended a reduction in the civil penalties assessed in this case. In addition, petitioner relies on the inspector's testimony that he does not at this time believe that the violations were "significant and substantial". Petitioner requested that I assess civil penalties in the amount of \$20 for each of the citations, and in support of this recommendation argued that under MSHA's regulations, all "non-S&S" citations are automatically assessed at \$20. This proposal was rejected, and my views of MSHA's regulations concerning civil penalty assessments for "non-S&S" citations were articulated on the record and need not be repeated here. Suffice it to say that counsel's motion that I accept a settlement of \$20 for each citation on the ground that Inspector Brock has now changed his mind and believes that the violations are not "significant and substantial" was rejected. However, the proposed settlement, based on my independent de novo consideration of all of the evidence adduced on the record was approved, and the civil penalty assessments are allocated as follows:

Citation No.	Date	30 CFR Section	Assessment
2057746	12/3/82	75.200	\$25
2057747	12/3/82	77.506	15
			\$40

ORDER

Respondent IS ORDERED to pay civil penalties in the amounts shown above in satisfaction of the citations in question, and payment is to be made within thirty (30) days of the date of this decision and order. Upon receipt of payment by the petitioner, this proceeding is dismissed.

George A. Koutras
Administrative Law Judge