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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. VA 83-40
A.C. No. 44-03868-03510

v.

No. 1 Mine

C C & P COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Broderick

On November 2, 1983, the Secretary filed a Motion to Withdraw its Civil Penalty Petition based on Respondent's agreement to pay the full amount assessed by MSHA. Accompanying the motion were prior assessment records, a copy of the Investigation Report of October 20, 1982, and information as to the size of Respondent's operation. On October 13, 1983, the parties filed a stipulation of fact pursuant to my prehearing order of August 22, 1983 and October 12, 1983.

I am treating the motion as a motion to approve a settlement, since sufficient information has been submitted for me to apply the statutory criteria to the proposed disposition of this matter. When a penalty case comes before the Commission, it must be considered de novo under section 110(k) of the Act, in the light of the criteria in section 110(i). A proposed payment of the amount previously assessed by MSHA is a proposal for approval of a settlement and may not be disposed of by ruling on a "motion to withdraw."

This proceeding was instituted following a fatal accident on October 21, 1982, when the rippers on a continuous mining machine being repaired started up suddenly and caught a miner working on the ripper chain adjustment and killed him. Three violations were charged: (1) a violation of 30 C.F.R. 75.1725(c), because repairs were being made on the ripperhead chain of the miner while the machine was energized; (2) a violation of 30 C.F.R. 75.509, because electrical work was being performed on the control circuit of the miner without the circuit being deenergized; (3) a violation of 30 C.F.R. 75.511, because electrical work was being performed on the control circuit without opening and locking out the disconnecting device. The violations were assessed at \$5,000, \$5,000, and \$2,000 respectively.

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Respondent is a small operator. The subject mine, which is its only mine, produces less than 100,000 tons annually. The mine will be worked out in approximately 5 months. During calendar year 1980, 12 violations were assessed at the mine; during 1981, 16 violations were assessed. From January through October, 1982, 19 violations were assessed (presumably including the 3 involved herein). This appears to be a moderate history of previous violations.

The violations were extremely serious, since each of them contributed to the fatal accident. Respondent was highly negligent: The repairs were being performed under the direction of the section foreman, a certified electrician. There was a history of electrical conductors being grounded on the continuous miner in question and the conveyor or ripperhead motors would inadvertently start. This history should have made for greater than ordinary caution in working on the machine. The violations were abated in a reasonable time.

Having considered the motion in the light of the criteria in section 110(i) of the Act, I conclude that the settlement should be approved.

Accordingly, the settlement is APPROVED and Respondent is ORDERED TO PAY the sum of \$12,000 within 30 days of the date of this order, and upon such payment, this proceeding is DISMISSED.

James A. Broderick
Administrative Law Judge