

CCASE:
SOL (MSHA) V. CYNTHIA COAL
DDATE:
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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 83-116
A.C. No. 15-12725-03502

v.

No. 8 Mine

CYNTHIA COAL CO., INC.,
RESPONDENT

DECISION

Appearances: Darryl A. Stewart, Esq., Office of the Solicitor, U.S.
Department of Labor, Nashville, Tennessee, for Petitioner
Byron W. Terry, Safety Director, Cynthia Coal Company,
Beaver Dam, Kentucky, for Respondent

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding 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), seeking a civil penalty assessment in the amount of \$20 for an alleged violation of mandatory health standard 30 CFR 71.208(a) as noted in a Section 104(a) Citation No. 9949426, served on the respondent by an MSHA inspector on August 12, 1982.

The respondent contested the citation, and the case was scheduled for a hearing in Evansville, Indiana, along with several other cases during the term November 1-3, 1983. However, respondent's counsel decided not to pursue the matter and agreed to pay the full amount of the proposed civil penalty assessment. In this regard, petitioner's counsel presented a proposed settlement on the record for my consideration.

Discussion

In support of the proposed settlement disposition of this case petitioner's counsel agreed that the respondent no

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longer wished to pursue the matter and he confirmed that the respondent's mine has been abandoned and closed and is no longer mining coal. Counsel also stated that the operator was a small operator, that the \$20 penalty is reasonable in the circumstances, that the negligence level for the citation ranged from "little to none", and that the respondent's history of prior citations consisted of two prior citations. Counsel was of the opinion that the proposed settlement constituted a reasonable resolution of the case.

After careful consideration and review of the pleadings and the arguments presented by the petitioner's counsel in support of the proposed settlement of this case I find that it is reasonable and in the public interest, and pursuant to Commission Rule 30, 29 CFR 2700.30 it is APPROVED.

ORDER

Respondent IS ORDERED to pay a civil penalty in the amount of \$20 within thirty (30) days of the date of this decision, and upon receipt of payment by MSHA this matter is dismissed.

George A. Koutras
Administrative Law Judge