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SOL(MSHA) V. WEST VIRGINIA REBEL COAL
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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

v.

WEST VIRGINIA REBEL COAL
COMPANY, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 83-117
A.C. No. 15-06365-03504

No. 1 Surface Mine

ORDER OF DISMISSAL

Before: Judge Steffey

Counsel for the Secretary of Labor filed on January 9, 1984, in the above-entitled proceeding a motion to withdraw the proposal for assessment of civil penalty and dismiss the proceeding or, in the alternative, a motion for approval of settlement. The alternative motions are accompanied by data showing that respondent paid in full the civil penalties totaling \$120 proposed by MSHA for six alleged violations of the mandatory health and safety standards. Respondent paid the proposed penalties by a check dated March 31, 1983, which was just 17 days after the proposal for assessment of civil penalty was filed on March 14, 1983.

There was apparently a lack of communication between the personnel who paid the proposed penalties and the personnel who are responsible for the filing of answers to proposals for assessment of civil penalty because respondent failed to file an answer to the proposal for assessment of civil penalty until after the Chief Administrative Law Judge had issued a show-cause order on June 20, 1983, requiring respondent to file an answer or be held in default and be ordered to pay the penalties proposed by MSHA. Respondent filed on July 1, 1983, an answer in reply to the show-cause order. The answer denies that any violations occurred and requests that a hearing be held "on all said matters".

The Secretary's motion cites the Commission's decision in *Mettiki Coal Corp.*, 3 FMSHRC 2277 (1981), in support of his request for permission to withdraw the proposal for assessment of civil penalty. In that interlocutory review case, the Commission held that granting a motion to withdraw a proposal for assessment of civil penalty was a satisfactory resolution of the controversy in circumstances showing that respondent had agreed to pay in full civil penalties totaling \$10,000 for seven alleged violations and had withdrawn its notice of contest. The Commission also stated

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in the Mettiki case that its ruling did not preclude a judge from denying a request to withdraw if "%y(3)5C the record discloses that resolution of the matter pending would best be served by the Commission's settlement procedures or by an evidentiary hearing. This situation is not presented in this case" (3 FMSHRC at 2277).

It does not appear that the Commission's settlement procedures would best serve the resolution of the issues in this proceeding either when it is considered that respondent paid in full the total penalties proposed by MSHA just 17 days after the proposal for assessment of civil penalty was filed. The Secretary's counsel commendably filed his motion in the alternative and provided ample reasons in support of his alternative motion for approval of settlement if I had found that approval of the parties' settlement agreement would provide the best method for resolution of the issues in this proceeding. Another reason for granting the motion to withdraw, instead of granting the alternative motion for approval of settlement, is that MSHA has already received the check for full payment of the proposed penalties so that there is no need for me to issue an order requiring respondent to pay the penalties proposed by MSHA.

In the circumstances described above, I find that the Secretary's motion for permission to withdraw the proposal for assessment of civil penalty should be granted.

WHEREFORE, it is ordered:

The motion for withdrawal of the proposal for assessment of civil penalty is granted, the proposal for assessment of civil penalty is deemed to have been withdrawn, and all further proceedings in Docket No. KENT 83-117 are dismissed.

Richard C. Steffey
Administrative Law Judge