

CCASE:
SOL (MSHA) V. H J 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

CIVIL PENALTY PROCEEDINGS

Docket No. VA 83-56
A.C. No. 44-04920-03513

v.

Docket No. VA 83-57
A.C. No. 44-04920-03514

H J AND H COAL COMPANY, INC.,
RESPONDENT

Docket No. VA 83-58
A.C. No. 44-04920-03515

Docket No. VA 83-59
A.C. No. 44-04920-03516

No. 3 Mine

DECISION

Appearances: Patricia L. Larkin, Esq., Office of the
Solicitor, U.S. Department of Labor, Arlington,
Virginia, for Petitioner;
John L. Bagwell, Esq., Grundy, Virginia,
for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

The above cases all involve the same mine and were consolidated for the purposes of hearing and decision. Of the nine alleged violations in the four dockets, the parties moved for approval of settlement agreements concerning six of them. Pursuant to notice, the cases were heard in Abingdon, Virginia, on June 5, 1984. Respondent admitted that the violations occurred, and testimony was taken on the three which were not settled for the purpose of determining appropriate penalties. Federal Mine Inspectors Ronald Matney and Donald Shortridge testified on behalf of Petitioner. No witnesses were called by Respondent. The parties waived their rights to file posthearing briefs.

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SETTLEMENT PROPOSAL

Docket No. VA 83-56

1. Citation No. 2158823 charged a violation of 30 C.F.R. 75.313 because of an inoperative methane monitor on a cutting machine. The violation was originally assessed at \$20 and the parties propose to settle for \$60. There is no history of methane at the mine. The machine operator was carrying a methane detector. The mine is above the water table. I accepted the representations in the motion and approved the settlement.

2. Citation No. 9925742 charged a violation of 30 C.F.R. 20.208(a) because of the failure of Respondent to take respirable dust samples for the 2-month period June and July 1982. The violation was originally assessed at \$20 and the parties propose to settle for \$40. Respondent's dust samples are now taken by a contractor. Respondent represents that the contractor is reputable, and that Respondent will see to it that samples are taken on a bi-monthly basis. I accepted the representations in the motion and approved the settlement.

Docket No. VA 83-57

1. Citation No. 2159242 charged a violation of 30 C.F.R. 77.1103(d) because of Respondent's failure to keep a transformer station area free of weeds. The violation was originally assessed at \$20 and the parties propose to settle for \$20. The violation was stated not to be serious. The weeds had just begun to grow and were not high. The condition had not been cited in the past. I accepted the representations in the motion and approved the settlement.

2. Citation No. 2159243 charged a violation of 30 C.F.R. 77.509 because of Respondent's failure to keep a transformer station locked against unauthorized entry. The violation was originally assessed at \$20 and the parties propose to settle for \$80. The area is somewhat isolated, and unauthorized entry is unlikely. However, the condition has been cited in the past, and serious injury is possible. I accepted the representations in the motion and approved the settlement.

3. Citation No. 2159244 charged a violation of 30 C.F.R. 75.403 because of Respondent's failure to record the results of onshift daily inspections. The violation was originally assessed at \$20, and the parties propose to settle for \$20. The inspections had in fact been made, but not recorded. I accepted the representations in the motion and approved the settlement.

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Docket No. VA 83-58

1. Citation No. 936387 charged a violation of 30 C.F.R. 75.305 for failure to make weekly examinations for hazardous conditions in an abandoned section. The violation was originally assessed at \$20, and the parties propose to settle for \$20. The operator believed the area was unsafe for entry to conduct the tests and filed a petition for check points to conduct the examinations. Ultimately the area was ordered sealed. I accepted the representations in the motion and approved the settlement.

CITATIONS IN WHICH THE PENALTY IS CONTESTED

1. Respondent does not contest the fact of violation in any of the three citations involved.

2. Between August 24, 1980 and August 23, 1982, there were 11 violations assessed and paid at the subject mine. This is a moderate history of prior violations.

3. The subject mine produces 200 to 300 tons of coal daily and employs from 7 to 15 miners. Respondent is a small operator.

4. There is no evidence that penalties assessed herein will affect Respondent's ability to continue in business.

5. The mine employs a conventional mining system with one section. The coal is removed by conveyor belt. The coal seam is 36 to 40 inches high.

6. The mine is 2,000 to 4,000 feet deep. It has a very hazardous slate roof and a history of roof falls.

7. On June 6, 1983, Inspector Matney issued Citation No. 2159241 charging a violation of 30 C.F.R. 75.1714(a).

8. On June 6, 1983, there were ten miners working underground. Only three self-contained self rescuers were present. Coal was being produced.

9. Respondent had an approved self-contained self rescuer storage plan which required that such devices be stored not more than 400 feet outby the face at the power station on intake air with two approaches.

10. An investigation and checking of serial numbers disclosed that Respondent had sent the self rescuers to a nearby mine owned by MP & M Coal Company to enable the latter to abate a citation for failure to have a self rescuer for each employee.

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11. The violation was deliberate.

12. The violation was very serious. The mine had seals erected in it, and there was a high degree of possibility of cutting into oxygen deficient atmosphere. Without an adequate number of self rescuers, this could result in fatal injuries to miners.

13. I conclude that an appropriate penalty for the violation is \$2,500.

14. On July 12, 1983, Inspector Matney issued Citation No. 2159249 charging a violation of 30 C.F.R. 75.202.

15. On July 12, 1983, there were four or five dislodged timbers in the main haulage area of the subject mine. They had probably been knocked out by a scoop.

16. The roof in the area was not bad. This is a heavily travelled area and Respondent should have been aware of it.

17. An injury was not likely to occur as a result of the violation.

18. I conclude that an appropriate penalty for the violation is \$50.

19. On July 12, 1983, Inspector Matney issued Citation No. 2159250 charging a violation of 30 C.F.R. 75.200.

20. On July 12, 1983, at numbers 5, 6 and 7 entries and adjoining crosscuts on the working section, the roof bolts were spaced from 53 inches to 60 inches at several locations.

21. The approved roof-control plan at the subject mine required that roof bolts be installed on 4 foot centers.

22. The roof was composed of slate and was fragile. A number of unplanned roof falls have occurred at the subject mine.

23. The operator should have been aware of the condition. It occurred on the working section which was heavily travelled.

24. The violation was serious. Because of the condition of the roof, strict following of the roof-control plan is imperative.

25. I conclude that an appropriate penalty for this violation is \$150.

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ORDER

Based on the above findings of fact and conclusions of law, Respondent is ordered to pay the following civil penalties within 30 days of the date of this decision.

CITATION	PENALTY
2158823	\$ 60
9925742	40
2159242	20
2159243	80
2159244	20
936387	20
2159241	2,500
2159249	50
2159250	150

Total \$2,940

James A. Broderick
Administrative Law Judge