

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

333 W. COLFAX AVENUE, SUITE 400
DENVER, COLORADO 80204

JUL 30 1984

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	:	CIVIL PENALTY PROCEEDINGS
	:	
	:	Docket No. WEST 83-31-M
	:	A.C. No. 02-00850-05502 A
	:	Docket No. WEST 83-32-M
	:	A.C. No. 02-00850-05503 A
	:	
	:	
GLINN ARNO GATES, and PETER G. JOHNSTONE, Respondents	:	Anamax Mining Company-Twin Buttes Mine (Sulfide Mill and Related Activities)

DECISION

Appearances: J. Philip Smith, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Petitioner;
William G. Walker, Esq., Stompoly and Even,
Tucson, Arizona,
for Respondents.

Before: Judge Vail

The above consolidated cases arose upon complaints filed by the Secretary of Labor, under section **110(c)** of the Federal Mine Safety and Health Act of 1977 (the Act), 30 U.S.C. **§ 820(c)**, against respondents Glinn Ar'no Gates and Peter G. Johnstone. The Secretary alleged the respondents, acting as agents of Anamax Mining Company within the scope of section **110(c)** of the Act, knowingly authorized, ordered, or carried out Anamax's violation of '30 **C.F.R. § 55.16-14(b)** cited in MSHA Citation No. 599853.

"Respondents filed answers denying the charges and the above matter came on for evidentiary hearing on June 6, 1984, in Tucson, Arizona. During a recess on the second day of the hearing, the parties negotiated a settlement which they presented for approval. Based upon the record of the case up to that time and the representations of the parties, the proposed settlement was tentatively approved subject to submission of a joint motion **of settlement and** for dismissal of these cases.

The joint motion for settlement was received on July 20, 1984, and represents in material parts the following:

1. The corporate operator paid an uncontested civil penalty assessment of \$8,000 for the violation cited in Citation No, \$99853..

2. During the hearing on June 7, 1984, the respondent's attorney proposed the following settlement and disposition of the subject cases:

a. That, without admitting liability, respondent Glinn Arno Gates under Docket No. WEST 83-31-M agrees to pay a civil penalty assessment of \$800 for the violation of 30 C.F.R. **§ 55.16-14(b)**; and

b. That the case against respondent Peter G. Johnstone, Docket No. WEST 83-32-M, be dismissed without a civil penalty assessment.

c. This stipulation of proposed settlement by the parties is in keeping with the Commission's decisions in Secretary of Labor (MSHA) v. Central Ohio Coal Company, 4 FMSHRC 1000 (1982), and Secretary of Labor v. Amax Lead Company of Missouri, 4 FMSHRC 975 (1982).

d. Both parties agree to bear their own respective costs of litigation in these cases',

CONCLUSION

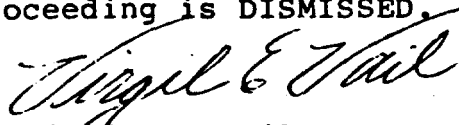
After careful review and consideration of the pleadings, arguments, trial record, and submissions in support of the joint motion to approve the proposed settlement of these cases, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. § 2700.30, the joint motion of the parties is GRANTED and the settlement is APPROVED.

ORDER

Therefore, IT IS ORDERED

1. That the complaint against respondent Peter G. Johnstone under Docket No. WEST 83-32-M is dismissed without a civil penalty assessment.

2. Respondent Glinn Arno Gates is ORDERED to pay a civil penalty in the amount of \$800 in satisfaction of the complaint filed in Docket No. WEST **83-31-M** within forty (40) days of the date of this decision and order, and upon receipt of payment by the petitioner, **this proceeding is DISMISSED.**



Virgil E. Vail
Administrative Law Judge

Distribution:

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