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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judge

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

WEST VIRGINIA REBEL COAL
COMPANY, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 83-209
A.C. No. 15-06365-03509

No. 1 Surface Mine

DISAPPROVAL OF SETTLEMENT
ORDER OF ASSIGNMENT

On March 27, 1984, the Solicitor filed his Response to the Order to Submit Information issued in the above-captioned proceeding. At issue is one violation, the proposed settlement of which is \$20, the originally assessed amount.

Citation No. 2053339 was issued for a violation of 30 C.F.R. 77.1605(b), because the foot and parking brakes on a scrape were inoperative. The Solicitor asserts in his motion the the Caterpillar 637 Scraper was operating on the outside edge of the coal pit at the time that this citation was issued and that there were no other miners on the ground near this machine. The Solicitor represents that although the machine was without service or footbrakes, it was operating on a very slight incline and was capable of being stopped by the use of its scraper blade or bowl. He also argues that the machine was not working on rocky ground and was therefore capable of exerting downward pressure with the blade to enable it to stop.

In his original motion, the Solicitor represented that gravity and negligence were moderate. I have consistently held that a \$20 penalty denotes lack of gravity. I am unable to approve a \$20 settlement of a violation which the Solicitor himself alleges is of moderate negligence and gravity. Moreover, it may be that the gravity was even more than moderate. Therefore, this case is hereby assigned to Judge James A. Broderick.

All future communications regarding this case should be addressed to Judge Broderick at the following address:

~2016

Federal Mine Safety and Health
Review Commission
Office of Administrative Law Judges
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Paul Merlin
Chief Administrative Law Judge