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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.

READING ANTHRACITE COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. PENN 84-142
A.C. No. 36-01965-03502

Buck Run P045A Strip Mine

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This proceeding concerns a civil penalty proposal 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 \$10,000, for a violation of mandatory safety standard 30 C.F.R. 77.704-1(b). The section 104(a) citation no. 2100028, was issued by an MSHA inspector on September 22, 1983, during the course of an investigation of a fatal electrical accident in which a miner was electrocuted when he inadvertently came into contact with an energized component at the mine power substation. The victim was part of an electrical crew performing work at the substation at the time of the accident.

Respondent filed a timely answer contesting the citation, and the case was scheduled for a hearing. However, the parties have filed a joint motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking my approval of a proposed settlement whereby the respondent agrees to pay a civil penalty in the amount of \$5,000, in settlement of the violation.

Discussion

The initial civil penalty assessment recommendation of \$10,000, for the violation in question, was made through MSHA's "special assessment" procedures pursuant to 30 C.F.R. 100.5, and it was based on information then available to the Office of Assessments. Petitioner now submits that facts have been disclosed which warrant reassessment of the civil penalty amount to \$5,000.

In support of the proposed settlement disposition of this case, petitioner's counsel has submitted a full discussion of the six statutory criteria contained in section 110(i) of the Act. Counsel has also submitted a detailed discussion and full disclosure as to the facts and circumstances surrounding the accident, as well as a complete explanation and justification for the proposed reduction in the initial proposed civil penalty assessment. Included as part of the arguments in support of the motion, are copies of (1) MSHA's official accident report of investigation; (2) a report prepared by the Westinghouse Electric Corporation concerning certain testing conducted in an attempt to assist in determining the location of the electrical discharge involved in the accident; (3) a sketch of the substation prepared during the course of the investigation; (4) a transcript of interviews and statements made by two of the electrical crew members who were working at the substation at the time of the accident; and, (5) an accident report prepared by a State of Pennsylvania Mine Electrical Inspector.

Petitioner asserts that the electrical crew performing the work at the substation in question were part of a qualified crew consisting of a chief electrician, the accident victim, and two qualified electricians. The accident victim was a qualified electrician with six years experience in surface and underground electrical low, medium, and high voltage. The victim had suffered electrical burns to both his hands and in the center of his spine, but no one observed him contact live electrical parts, nor could anyone determine what electrical parts he had contacted. Although the spare electrical circuit at which the victim and another crew member performed their work was deenergized, the main power substation structure also supported incoming power lines of 66,000 volts and a stepped down power line of 4160 volts which remained energized while the pair worked on the substation roof. The power lines and components were located at heights of approximately 4 1/2 to 15 feet and 30 feet above the roof level. The components closest to where the victim and his fellow crew member were working carried 4160 volts and were located 4 1/2 feet above the substation roof.

Petitioner points out that immediately prior to starting the work, the victim and his fellow crew member discussed the presence of the hot lines and that the victim stated "as long as we are careful, we're all right . . . well, we're not going to get near that" (Transcript, 9/27/83, interview with crew member, p. 14). Petitioner concludes that it was the judgment of the experienced electrical crew (and of the victim in particular) that the job tasks they were performing

~2169

could be safely performed. Petitioner concludes further that the negligence here was moderate, considering the fact that an experienced crew of electrical workers set up a job which involved their own personal safety, and that the evidence suggests that these qualified electricians considered themselves to be safe as long as they worked carefully.

The information provided by the petitioner reflects that the respondent is a medium sized operator producing 336,116 production tons of coal annually as of April 1984, and 31, 942 tons annually at its Buck Run P-45A strip mine at the same time.

During the two year period from 9/22/81 to 9/21/83, respondent received only one violation from MSHA, a 104(a) citation citing 30 C.F.R. 48.28(a) and a civil penalty in the sum of \$32.

The information provided by the petitioner also establishes that good faith was demonstrated promptly by the respondent holding a meeting with electricians at which time proper switching and grounding procedures in accordance with the regulations were established.

Conclusion

After careful review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of this case, I conclude and find that it is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the motion IS GRANTED, and the settlement IS APPROVED.

ORDER

Respondent IS ORDERED to pay a civil penalty in the amount of \$5,000, in settlement of the citation in question, and payment is to be made to the petitioner within thirty (30) days of the date of this decision and order. Upon receipt of payment, this proceeding is dismissed.

George A. Koutras
Administrative Law Judge