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SOL (MSHA) V. KAISER STEEL CORP.

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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. WEST 83-68
A.C. No. 42-00094-03504

v.

Sunnyside No. 2 Mine

KAISER STEEL CORPORATION,
RESPONDENT

DECISION APPROVING SETTLEMENT

Appearances: James H. Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
Jeffrey Collins, Esq., Kaiser Steel Corporation,
Colorado Springs, Colorado, for Respondent.

Before: Judge Lasher

Prior to commencement of formal hearing on March 1, 1985, the parties proposed voluntary settlement of this matter which involved a fatality. Respondent agreed to pay a penalty of \$2,000.00. The Secretary's motion to amend the Citation (No. 2073181) to allege a violation of 30 C.F.R. 77.404(b) rather than 404(c) as originally cited, (Footnote 1) was granted at the same time. There were no eyewitnesses to the fatal accident which resulted when a "utility belt person" who was working alone was caught between a return idle roller and a belt while performing maintenance or repairs. (Footnote 2) The Respondent, a large coal mine operator with a moderate history of previous violations during the 2½ year

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period preceding the subject violation (Footnote 3), showed in considerable mitigation of its culpability that the deceased miner had 11 years mining experience, had received some training, had previously worked around belts and was chairman of the Mine Safety Committee. While the violation was found to be serious since it resulted in a fatality only a low degree of negligence on the part of the Respondent was demonstrated. (Footnote 4) Abatement of the violation was, upon notification, accomplished promptly and in good faith by Respondent. (Footnote 5) Upon consideration of the representations of the parties, and it otherwise appearing reasonable and proper, the proposed settlement was approved from the bench and is hereby affirmed.

Accordingly, if it has not previously done so, Respondent shall pay the Secretary of Labor the sum of \$2,000.00 within 30 days from the date hereof.

Michael A. Lasher, Jr.
Administrative Law Judge

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Footnotes start here:-

~Footnote_one

1 Thus changing the nature of the infraction from performing maintenance or repairs with the power on and the machinery unblocked to operation of machinery by persons not trained and authorized to operate such.

~Footnote_two

2 MSHA's original penalty assessment was \$206.00.

~Footnote_three

3 Precise information with respect to the six mandatory penalty assessment factors was submitted on the record by stipulation and agreement of the parties.

~Footnote_four

4 Although the decedent had received some prior training, it is inferred from Respondent's admission of the occurrence of the violation that he was insufficiently trained.

~Footnote_five

5 Significantly, abatement was accomplished by retraining employees in belt cleaning and safety procedures, thus supporting the Secretary's on-the-record amendment of the violation to one involving training.