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SOL (MSHA) v. MEDUSA CEMENT
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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 PROCEEDING

Docket No: SE 85-3-M
A.O. No: 09-00053-05508

v.

Clinchfield Mine & Mill

MEDUSA CEMENT COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Merlin

The Solicitor has filed a motion to approve settlement of the violation involved in this matter. The originally assessed amount was \$10,000 and the proposed settlement is for \$2000.

30 C.F.R. 56.15-5 directs that "safety belts and lines be worn when men work where there is danger of falling". A violation of this standard occurred when two employees dropping railroad cars had not been wearing safety belts. One of the employees was thrown off the car and under the wheels when the car he was riding collided with a parked car. He was killed. Had he been wearing a safety belt, he would not have been thrown under the wheels.

The violation was therefore of the utmost gravity. The Solicitor represents however, that negligence is greatly diminished because the operator had a written safety manual directing employees to wear safety belts while gravity dropping rail cars and held regular safety meetings with all available employees which on occasion included discussion of the company's above-noted safety belt requirements. I accept these representations as mitigating negligence.

According to the Solicitor, the decedent was an unusually large person who was not normally assigned to work at this location and the operator had safety belts elsewhere at the mill which would have fit the deceased. In addition, the Solicitor advises that the accident occurred on the night shift in which the entire work force of the mill consisted of one supervisor and 8 employees under his direction. This supervisor had to move about a large

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mill and several acres of premises in order to supervise these 8 employees. The supervisor was performing duties away from the rail cars at the time of the accident. These factors do not mitigate negligence. If the operator assigns a big person to work requiring a safety belt, it must have a belt on the spot which will fit him or it must find someone else to do the work. And supervision of hazardous work on the night shift must be just as effective as on any other shift.

The information furnished by the Solicitor indicates the operator has a very small history of prior violations.

I have carefully reviewed the recommended settlement because there was a fatality. The question is a close one. However, because negligence was somewhat less than originally thought and because the operator previously had a good record I have decided to approve the settlement which is a substantial amount. The operator must however, exercise far greater vigilance in the future.

The settlement is APPROVED and the operator having paid, this case is DISMISSED.

Paul Merlin
Chief Administrative Law Judge