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SOL (MSHA) v. JIM WALTER RESOURCES
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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 85-44
A.C. No. 01-01247-03636

v.

No. 4 Mine

JIM WALTER RESOURCES, INC.,
RESPONDENT

Appearances: George D. Palmer, Esq., Office of the Solicitor,
U.S. Department of Labor, Birmingham, Alabama,
for Petitioner; Harold D. Rice, Esq., and R.
Stanley Morrow, Esq., Birmingham, Alabama,
for Respondent.

DECISION

Before: Judge Broderick

STATEMENT OF THE CASE

In the case, the Secretary seeks penalties for two alleged violations of mandatory safety standards. The parties have agreed to a settlement of one of the alleged violations and have submitted the other for decision on stipulated facts.

CITATION 2483275

This citation charged a violation of 30 C.F.R. 75.323 because the mine foreman, the mine superintendent and the assistant mine superintendent were not countersigning the approved weekly examination book. The violation was originally characterized as significant and substantial, and was assessed at \$136. Petitioner has modified the citation and deleted the significant and substantial characterization. The settlement motion states that the gravity criterion was evaluated too high and the parties propose to settle for a payment of \$75. I conclude that the settlement is in the public interest and should be approved.

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STIPULATION

The parties have stipulated to the following facts and issues concerning citation 2483267 and submit the case for decision based on the stipulation:

1. The Operator is the owner and operator of the subject mine.
2. The Operator and the mine are subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.
3. The Administrative Law Judge has jurisdiction in this case.
4. The MSHA Inspector who issued the subject order was a duly authorized representative of the Secretary.
5. A true and correct copy of the subject order was properly served upon the Operator.
6. The copy of the subject order and determination of violation at issue are authentic and may be admitted into evidence for the purpose of establishing its issuance, but not for the purpose of establishing the truthfulness or relevance of any statements asserted therein.
7. Imposition of a penalty in this case will not affect the Operator's ability to do business.
8. The alleged violation was abated in good faith.
9. The Operator's history of prior violations is average.
10. The Operator's size is medium.

The parties agree that the condition or practice described in the citation occurred and that the belt described in the citation was a coal-carrying belt.

The parties further agree that the decision in Docket No. SE 84-23 on the coal-carrying issue should determine the merit of this case. The mine inspector's evaluation of the violation is set forth in Section III at the bottom of the citation attached hereto as "Exhibit A". The petitioner's analysis of the violation against petitioner's regulation for determining

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the penalties to be proposed is set forth on the second page of the proposed assessment. The parties agree that the proposed penalty of \$136.00 is appropriate if a violation is found to have occurred.

I accept the stipulation and find the facts stipulated to.

CONCLUSIONS OF LAW

Subsequent to the submission of the above stipulations, the Commission decided the cases of Secretary v. Jim Walter I, 7 FMSHRC ----, Docket No. SE 84-23 (April 29, 1985) and Secretary v. Jim Walter II, 7 FMSHRC ----, Docket No. SE 84-57 (April 29, 1985). They decided that 30 C.F.R. 75.1403-5(g) applied to coal-carrying belt conveyors. Following that decision, I conclude that a violation has been established in the case before me. Considering the stipulated facts in the light of the criteria in section 110(i) of the Act, I conclude that the penalty assessed by MSHA, \$136 is an appropriate penalty for the violation.

ORDER

Based on the above findings of fact and conclusions of law, Respondent is ORDERED to pay, within 30 days of the date of this decision, the following civil penalties.

CITATION	PENALTY
2483275	\$ 75.00
2483267	136.00
	\$211.00

James A. Broderick
Administrative Law Judge