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SOL (MSHA) v. GREENWICH COLLIERIES
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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.

CIVIL PENALTY PROCEEDING

Docket No. PENN 85-113
A.C. No. 36-02405-03585

Greenwich Collieries No. 1 Mine

GREENWICH COLLIERIES,
DIVISION OF PENNSYLVANIA
MINES CORPORATION,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding 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 \$1,000 for a violation of section 103(k) of the Act. By motion filed with me on August 20, 1985, pursuant to 29 C.F.R. 2700.30, the parties seek approval of a proposed settlement disposition of the case, the terms of which require the respondent to pay a civil penalty assessment in the amount of \$550 for the violation in question.

Discussion

In support of the proposed settlement disposition of this matter, the parties state that they have discussed the alleged violation and the six statutory criteria stated in section 110(i) of the Act. Further, they have submitted a complete discussion and full disclosure as to the facts and circumstances surrounding the issuance of the violation, and they have filed full information concerning the criteria found in section 110(i).

Petitioner's counsel stated that the section 104(a) Citation, No. 2114018, March 15, 1984, was issued pursuant to section 109(c) of the Act when the inspector determined that a section foreman entered and worked in an area which was subject to an order of withdrawal issued pursuant to section 103(k). The section foreman was not among those authorized to enter the area under

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order. Counsel explains that the original section 103 order was issued on February 16, 1984, following a methane explosion which resulted in three deaths. The order listed who was permitted to enter the area specified, e.g. State and MSHA officials, company representatives and UMWA personnel necessary to conduct rescue operations. Subsequent modifications of the original order created confusion as to what work could be done in the cited area, resulting in the entrance of section foreman Richard Endler into the prohibited area to perform rock dusting. The mine was idle at the time and was not reopened until April due to the ongoing investigation. While it is clear that a violation of section 109(c) occurred, petitioner's counsel believes the assessment of "high" negligence is not warranted. Inasmuch as there was no likelihood of an occurrence, as found by the issuing inspector, and no workers would be affected, counsel asserts further that the proposed amended civil penalty is proper in view of the minimal gravity.

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 the proposed settlement disposition 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 \$550 in satisfaction of the citation in question, and payment is to be made to MSHA 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