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SOL (MSHA) V. PYRO MINING
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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. KENT 85-97
A.C. No. 15-13881-03554

v.

Pyro No. 9 Slope
William Station

PYRO MINING COMPANY,
RESPONDENT

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for the Petitioner;
Bruce Hill, Director of Safety and Training,
Pyro Mining Company, Sturgis, Kentucky,
for the Respondent.

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding initiated 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). Petitioner seeks civil penalty assessments against the respondent for two alleged violations of certain mandatory safety standards set forth in Part 75, Title 30, Code of Federal Regulations. The respondent filed a timely answer contesting the alleged violations, and a hearing was convened in Evansville, Indiana, on December 3, 1985.

Issues

The issues presented in this case are (1) whether the conditions or practices cited by the inspector constitute violations of the cited mandatory safety standards, and (2) the appropriate civil penalty to be assessed for the violations, taking into account the statutory civil penalty criteria found in section 110(i) of the Act.

Discussion

Section 104(a) "S & S" Citation No. 2505478 issued on January 7, 1985, cites a violation of 30 C.F.R. 75.301, and the condition or practice is stated as follows:

A violation was observed on the No. 3 unit I.D. 003 in that the quantity of air going through the last open crosscut was less than 9000 CFM as required by the approved ventilation, methane and dust-control plan. When measured with an approved anemometer there was only 5710 CFM going through the last open crosscut.

Section 104(a) "S & S" Citation No. 2506565, issued on January 28, 1985, cites a violation of 30 C.F.R. 75.400, and the condition or practice is stated as follows: "An accumulation of loose coal was present under the bottom belt and rollers along the No. 1 belt conveyor entry starting at the tail feeder and extending outby for a distance of approximately 20 feet."

This case is one of five cases heard in Evansville, Indiana, on December 3, 1985. When this case was called for trial, the parties advised me that the respondent admitted to the violations, and sought leave to dispose of the matter by tendering full payment of the proposed civil penalties filed by the petitioner for the two violations in question.

Respondent's representative confirmed that the respondent no longer contests the violations, and he agreed that the respondent would tender the full amount of the proposed civil penalties. He also agreed to the negligence and gravity findings made by the inspector in support of the citations issued in this case.

The parties stipulated that at all times relevant to this case, the overall coal production for the respondent's operating company was 5,020,840 tons, and that the production for the Pyro No. 9 William Station Mine was 2,041,542 tons.

The parties stipulated that the payment of the assessed civil penalties will not adversely affect the respondent's ability to continue in business.

The parties stipulated that the violations were promptly abated in good faith by the respondent. I take note of the

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fact that Citation No. 2505478 was abated within 20 minutes of its issuance, and that Citation No. 2506565 was abated within an hour of its issuance. In both instances abatement was achieved prior to the time fixed by the inspector.

The respondent's request to withdraw its contest and to pay the proposed civil penalties was granted from the bench, and I considered the proposed disposition of this case as a settlement proposal pursuant to Commission Rule 30, 29 C.F.R. 2700.30. Further, after consideration of the pleadings, stipulations, and arguments made on the record by the parties in support of the proposed mutually agreed upon disposition of the case, I rendered a bench decision approving the proposed disposition, and this decision is reaffirmed and reduced to writing herein pursuant to Commission Rule 65, 29 C.F.R. 2700.65.

Conclusion

In view of the foregoing, the citations issued in this case ARE AFFIRMED. Further, after careful consideration of the information submitted by the parties with respect to the six statutory civil penalty criteria found in section 110(i) of the Act, I conclude and find that the proposed settlement disposition advanced by the parties is reasonable and in the public interest, and IT IS APPROVED.

ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of \$206 in full satisfaction of Citation No. 2505478, January 7, 1985, 30 C.F.R. 301, and a civil penalty in the amount of \$112 for Citation No. 2506565, January 28, 1985, 30 C.F.R. 75.400. Payment is to be made to the petitioner within thirty (30) days of the date of this decision and order, and upon receipt of payment, this proceeding is dismissed.

George A. Koutras
Administrative Law Judge