CCASE:
SOL (MSHA) V. PYRO MINING
DDATE:
19860107
TTEXT:

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 85-182 A.C. No. 15-13881-03569
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 a civil penalty assessment in the amount of $241 against the respondent for an alleged violation of mandatory health standard 30 C.F.R. 70.501. The respondent filed a timely answer contesting the alleged violation, 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 a violation of the cited mandatory health standard, and (2) the appropriate civil penalty to be assessed for the violation, taking into account the statutory civil penalty criteria found in section 110(i) of the Act.

Discussion

Section 104(a) "S & S" Citation No. 2505980, issued on June 12, 1985, cites a violation of 30 C.F.R. 70.501, and the condition or practice is stated as follows:

> Based upon the results of a supplemental noise survey conducted by MSHA on 5Ä30Ä85, the noise exposure exceeds the allowable dose percentage of 132%. The noise exposure in the working environment of the continuous miner operator (occupation code 036) on Number 4 unit MMU No. 0040 is 133.5%.
>
> The operator shall take corrective actions to reduce the noise level to within the allowable limit of 132%. A hearing conservation plan as required by section 70.501 shall be submitted to MSHA within 60 days of this citation dated 6Ä4Ä85. Joy Miner 14 CMÄ5 Co. SN. M 004. No. 4 Unit located in the 1st west entries off the 5th north.

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 they reached a proposed settlement of the controversy, the terms of which included an agreement by the respondent to pay a civil penalty assessment in the amount of $50 for the violation in question.

The respondent's representative agreed that the violation occurred as stated in the citation, and he also agreed to the negligence finding made by the inspector in support of his citation.

The parties stipulated that at all times relevant to this case, the overall coal production for the respondent 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 penalty will not adversely affect the respondent's ability to continue in business. They also stipulated that the violation was abated in good faith by the respondent.

In support of the proposed civil penalty reduction in this case, the petitioner's counsel asserted that he has taken into consideration a possible error factor in connection with the dosimeter used by the inspector to measure the noise level exposure for the continuous miner operator's working environment. Under the circumstances, counsel asserted that the gravity of the violation is not as great as originally determined by the inspector.

I take note of the fact that in its answer to the initial civil penalty proposal filed by the petitioner, the respondent took issue with the inspector's "significant and substantial" (S & S) finding in view of the marginal dosimeter reading of 133.5 percent. The allowable noise exposure limit for the tested occupation in question is 132 percent. I also take note of the fact that compliance was achieved and the noise level exposure was reduced to within the allowable limit of 132 percent after the respondent replaced a worn part and replaced a chain on the continuous-mining machine operated by the affected miner in question. Under the circumstances, I cannot conclude that the inspector's original gravity finding indicating a permanently disabling possible hearing loss is supportable.

Conclusion

After careful consideration of the pleadings, stipulations, and arguments advanced by the parties on the record in support of the proposed settlement disposition of this case, I affirmed the citation and approved the proposed settlement in a bench decision made pursuant to 29 C.F.R. 2700.30. That decision is reaffirmed and reduced to writing pursuant to 29 C.F.R. 2700.65. I conclude and find that the settlement disposition is reasonable and in the public interest.

ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of $50 for the violation in question, and payment is to be made to the petitioner 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