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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. CENT 85-149-M
A.C. No. 03-00506-05502

v.

Sandhog Dredge

PINE BLUFF SAND & GRAVEL
COMPANY,
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 \$2,000, for an alleged violation of mandatory safety standard 30 C.F.R. 56.15Å5. The respondent contested the alleged violation and the case was docketed for a hearing on the merits. However, the parties have now filed a motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of a proposed settlement of the case. The settlement requires the respondent to pay a civil penalty assessment of \$1,000 for the violation in question.

Discussion

The section 104(a) citation issued in this case was in connection with a fatality which occurred when a foreman climbed to the top of a dredge pilot house to measure a pipe and lost his footing and fell 22 feet to his death. The foreman did not have a safety belt or line, and the cited section 56.15Å5, requires that such safety devices be worn where there is a danger of falling.

In support of the settlement proposal, the respondent has submitted an affidavit asserting that the accident victim was an experienced supervisor and shop foreman with 10 years of experience in the boat and barge building and maintenance business before coming to work for the respondent in 1984. Respondent states that the foreman had a very good prior safety and training background, attended weekly safety meetings, and helped to orientate new employees with a company safety manual entitled "Barge Construction Safety Code."

The respondent further states that while in its employ, the foreman attended monthly safety meetings, and as a supervisor with several years of experience in safety training, should have known when it was appropriate to wear a safety belt and safety line. The respondent takes issue with MSHA's special assessment and narrative statement that "safety belts and lines were not available on the dredge nor at the shore property." The respondent's affidavit reflects that a safety belt and safety line were hung on a wall in plain view in a room next to the office that the foreman had occupied for several months in the shop. The respondent has submitted a photograph to support its contention that the safety belt and line were stored only a few feet from the foreman's office.

The respondent maintains that it has an excellent safety record, and it has submitted copies of some of its safety rules and minutes of its safety meetings. The respondent also points out that two dredge inspections conducted by MSHA in September, 1983, and on August 30, 1984, a few months before the accident, resulted in no violations being found.

The petitioner confirms that at the time of the assessment the respondent had no previous assessed violations during the preceding 24 months, and the information in the record reflects that the respondent is a small sand and gravel operator with an annual production of 9,324 tons. I take note of the fact that at the time the citation was issued, the inspector believed that the respondent's negligence was "moderate." However, this finding was later modified to reflect "low negligence."

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.

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ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of \$1,000, for the violation 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 case is dismissed.

George A. Koutras
Administrative Law Judge