

CCASE:  
BON TRUCKING COMPANY V. SOL (MSHA)  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

BON TRUCKING COMPANY, INC.,  
CONTESTANT

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
RESPONDENT

CONTEST PROCEEDINGS

Docket No. KENT 85-34-R  
Order No. 2472775; 9/25/84

Docket No. KENT 85-35-R  
Order No. 2472776; 9/25/84

Docket No. KENT 85-151-R  
Citation No. 2595441; 6/6/85

Docket No. KENT 85-152-R  
Citation No. 2594993; 6/6/85

Docket No. KENT 85-153-R  
Citation No. 2594994; 6/6/85

Docket No. KENT 85-154-R  
Citation No. 2594996; 6/6/85

Docket No. KENT 85-155-R  
Citation No. 2594997; 6/6/85

Berger No. 2 Mine

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

BON TRUCKING COMPANY, INC.,  
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. KENT 86-104  
A.C. No. 15-13202-03544

Berger No. 2 Mine

DECISION APPROVING SETTLEMENT

Before: Judge Melick

These consolidated cases are before me under section 105(d) of the Federal Mine Safety and Health Act of 1977 the "Act." Proceedings had been stayed in these cases at the specific request of the mine operator and the Secretary to await the decision of the United States Attorney as to whether to present criminal charges. Because of the age of these cases and the lack of specific information as to when the

United States Attorney might reach a decision in the matter, the stay was subsequently dissolved and these cases set for hearings on the merits.

The Secretary thereafter filed a motion to approve a settlement agreement and to dismiss the cases. The motion reads in part as follows:

"These citations and orders were issued during the investigation of the multiple fatal roof fall of September 12, 1984 at the Berger No. 2 mine operated by Bon Trucking Company, Incorporated (Bon Trucking). They are specially assessed penalties totalling \$55,000.00. Bon Trucking has offered to settle these matters by the voluntary penalty payment of \$50,000, to be allocated by the Secretary among [sic] the various violations. The Secretary has agreed, at the request of Bon Trucking counsel, to accept payment of the agreed amount in five monthly installments, the first of which is to be \$10,000 due on the last day of the month in which the administrative law judge approves the settlement, with the remainder being paid \$10,000 per month for the following four months on the last day of each month. It is also understood that the total balance will be due together with interest and costs as provided by the Federal Mine Safety and Health Act of 1977 (Mine Act) and federal debt collection laws if Bon Trucking fails to make these installment payments as agreed.

The Secretary submits that the following allocation of the settlement is consistent with the remedial purposes of the Mine Act in particular Section 110(i), and is in the public interest:

Citation/Order No.	30 C.F.R.	Proposed	Settlement
2272775	75.200	\$10,000	\$10,000
2472776	75.200	\$10,000	\$10,000
2594994	75.200	\$10,000	\$10,000
2594996	75.201	\$10,000	\$10,000
2594993	75.200	\$ 5,000	\$ 5,000
2594995	75.200	\$ 3,000	\$ 1,000
2594997	75.303	\$ 5,000	\$ 2,000
2594998	75.1200	\$ 2,000	\$ 2,000
TOTAL		\$55,000	\$50,000

The roof fall collapsed on six miners, killing four and injuring two, as indicated in the Secretary's investigation report. The massive roof fall occurred in the second set of entries off 1st right of the Berger No. 2 Mine, Harlan County, Kentucky. The fall occurred while the miners were repairing a bridge conveyor, used with the auger-type continuous

mining machine. A large portion of the roof, about 100 feet long, 30 feet or more wide, and 10 feet or less in thickness, fell and covered one bridge conveyor and part of the mining machine. The Secretary's investigation further revealed that entry and cross-cut widths exceeded the allowable widths as required by the roof control plan and that mining of pillars (second mining) in by the accident area had occurred.

The Secretary's allocation of penalties appropriately places the maximum penalty on those four violations which were the greatest contributing factors in the roof fall. This allocation properly requires full payment of the maximum civil penalty proposed for these four roof-control and mining method violations. In these violations, Bon Trucking was cited for not following the major provisions of its approved roof-control plan and for practicing mining methods which resulted in faulty pillar recovery. In a fifth violation, a \$5,000 penalty is assessed for the violation citing Bon Trucking for mining pillars (second mining) when it did not include procedures for such activity or supporting the roof during second mining in the roof control plan submitted for MSHA's approval.

Failure to provide supplementary roof support materials and failure to conduct a pre-shift examination are violations cited which the Secretary also has included in this settlement. These violations, in the Secretary's view, contributed to a substantially lesser degree to the cause of the roof fall but were issued during the investigation and are discussed in the Secretary's report. This lesser and indirect relationship to the accident supports the reduction of these proposals as indicated. The penalty proposal for the up-dated mine map violation remains unchanged, since maps provided by the operator at the time of the roof fall bore very slight resemblance, to the actual mining structure and conditions underground. A higher penalty was not proposed for this clear violation since, it too, was not directly related to the cause of the roof fall. The settlement amounts are consistent with what the Secretary would expect had the cases been litigated.

All the violations in these proceedings were very serious.

The Secretary maintains that these violations involved negligence ranging from a high degree to reckless disregard as described in the copies of the

citations and orders previously submitted, and further maintains that the penalty assessments accurately reflect these levels of negligence. Bon Trucking denies that any negligent or other tortious act or omission on its part caused the roof fall and takes the position that for purposes of actions other than actions or proceedings under the Mine Act, nothing contained herein shall be deemed an admission by Bon Trucking that it violated the Mine Act or its standards. Therefore, the issue of Bon Trucking's negligence is in dispute between the parties.

The violations were abated in good faith and the operator's history of prior violations is not considered a factor in their occurrence. The operator is medium in size and the payment of these penalties will not adversely effect its ability to remain in business. (However, the operator is not presently engaged in active operation of a mine.)

This settlement agreement is the complete written agreement between the Secretary and Bon Trucking. While the Secretary agrees that this settlement is not an adjudication of the issues herein in dispute, it is understood by Bon Trucking that these citations and orders are final dispositions under the Mine Act and will be considered a part of Bon Trucking's history for purposes of the Mine Act."

Based on the representations and documentation submitted in these cases I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act and is consistent with this Commissions decision in Secretary v. Amax Lead Company of Missouri, 4 FMSHRC 975 (1982).

WHEREFORE, the motion for approval of settlement is GRANTED, and it is ORDERED that Bon Trucking Co., Inc., pay a penalty of \$50,000 in accordance with the payment schedule provided in the settlement agreement. The Contest proceedings are dismissed.

Gary Melick  
Administrative Law Judge