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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

CIVIL PENALTY PROCEEDINGS

Docket No. PENN 86-51
A.C. No. 36-02404-03608

v.

Greenwich Collieries No. 2 Mine

GREENWICH COLLIERIES,
RESPONDENT

GREENWICH COLLIERIES,
CONTESTANT

CONTEST PROCEEDING

Docket No. PENN 86-7-R
Order No. 2549436; 9/3/85

v.

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

Docket No. PENN 86-8-R
Order No. 2549437; 9/3/85

Docket No. PENN 85-314-R
Order No. 2549335; 8/30/85

Greenwich No. 2 Mine

DECISION AND ORDER OF DISMISSAL

Appearances: Linda M. Henry, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for the Petitioner/Respondent;
Joseph T. Kosek, Esq., Greenwich Collieries,
Ebensburg, Pennsylvania, for the Respondent/
Contestant.

Before: Judge Koutras

Statement of the Proceedings

These consolidated proceedings were scheduled for hearing in
Indiana, Pennsylvania, during the hearing term June 3rd, 1986,
along with several other cases involving these same parties.
Docket No. PENN 86-51, is a civil penalty proceeding

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initiated by MSHA pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. MSHA seeks civil penalty assessments for five alleged violations of certain mandatory safety standards found in Part 75, Title 30, Code of Federal Regulations, as charged in five section 104(d)(2) orders, with special "S & S" findings, served on the respondent Greenwich Collieries in August and September 1985. Docket Nos. PENN 85-314, PENN 86-7 and PENN 86-8, are three contests filed by Greenwich Collieries challenging the legality of three of the orders (2548335, 2549436, and 2549437).

Discussion

The conditions or practices cited as alleged violations in these proceedings are as follows:

Order No. 2549419 - August 22, 1985, 30 C.F.R. 75.516-2(c). Additional insulation was not provided for the communication circuit (twist wires) where they crossed over and under power cables in the track entry leading to the M3 tailgate of the M5 longwall working section. This telephone wire was twisted around 550 volt pump cables at the distribution box at the M3 #2 crossbelt. This box was placed in this area on 8-21-85 and the telephone wire should have been seen. This telephone wire also crossed 550 volt pump cables in the track entry and certified persons should have seen this condition.

Order No. 2549335 - August 30, 1985, 30 C.F.R. 75.400. An accumulation of combustible material consisting of paper, rags, and card board boxes was allowed to exist in the first crosscut inby the M-2 track switch, within 8 1/2 feet of the energized trolley wire 250 volts D/C power. The cardboard boxes measured with a standard rule 1 1/2 x 2 foot in width, 3 foot in length. There were 8 of them with fiberglass insulation in them. There were also several smaller cardboard boxes filled with paper and rags in this area. This area was preshifted on the 4 to 12 p.m. shift at 10:00 hours, R.B. on the 8/29/85.

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Order No. 2549436 - September 3, 1985, 30 C.F.R. 75.202. Loose not adequately supported roof was present along the MÄ14 track entry beginning at the return overcast and extending inby 42' to spad 76.36. The roof in this area was broken in several places and contained a cutter along the left rib of which 4" to 6" of rock fell out. The roof supports in this area, posts and bolts, showed sign of pressure on them. This area is examined each shift during the preshift examination.

Order No. 2549437 - September 3, 1985, 30 C.F.R. 75.303(a). An adequate preshift examination was not conducted in the MÄ14 area of the mine in that an obvious violation and hazardous condition existed along the MÄ14 track entry and this condition had not been reported or recorded in the book provided for this purpose on the surface. This area was preshifted on the 12:01 a.m. to 8 a.m. shift on 9/3/85 by Donald Schroyer. It was apparent that this condition existed for a period of time.

Order No. 2404348 - September 16, 1985, 30 C.F.R. 75.400. An accumulation of combustible materials (lunch wrappers and wax paper) were thrown on the mine bottom in the last open crosscut off of the LÄ1 entry in the MÄ5 longwall section ID No. 004. The crosscut is used for the men eating dinner.

When these dockets were called for trial, the parties advised me that they had reached a settlement of all of the contested violations, and pursuant to Commission Rule 30, 29 C.F.R. 2700.30, they jointly moved for approval of the proposed settlement. The parties were afforded an opportunity to present their proposals on the record, and the proposed settlement disposition is as follows:

Order No.	Date	30 C.F.R. Section	Assessment	Settlement
2549419	8/22/85	75.516Ä2(c)	\$ 500	\$ 100
2549335	8/30/85	75.400	800	400
2549436	9/3/85	75.202	1,000	1,000
2549437	9/3/85	75.303(a)	1,000	1,000
2404348	9/16/85	75.400	500	250

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The respondent agreed to pay the full amount of the \$1,000 civil penalty assessments for section 104(d)(2) Order Nos. 2549436 and 2549437, issued on September 3, 1985.

With regard to Order No. 2549335, petitioner's counsel asserted that the cited accumulations of trash in question were placed in the entry to be picked up by a tractor and removed from the mine, but were cited by the inspector before this could be done. Under the circumstances, counsel suggests that the degree of negligence is not as high as originally believed, and that the proposed settlement of \$400 for the violation is not unreasonable.

With regard to Order No. 2404348, petitioner's counsel pointed out that the cited accumulations consisted of paper materials discarded by the miners immediately after eating their dinner on the shift prior to the inspection. Counsel believes that the proposed settlement of \$250 is reasonable under the circumstances.

With regard to Order No. 2549419, petitioner's counsel asserted that the gravity was low and that it was unlikely that the cited condition would result in an accident or injury. Under the circumstances, counsel believed that the agreed upon settlement of \$100 is reasonable.

The parties agreed that the respondent is a medium to large size mine operator employing 700 miners at all of its operations, and that its annual coal production was approximately two million tons. They also agreed that the annual production for the No. 2 Mine is approximately 877,000 tons, and that the payment of the civil penalties in question will not adversely affect the respondent's ability to continue in business.

The parties agreed that all of the violations were abated in good faith within the times fixed by the inspectors. Petitioner's counsel confirmed that the respondent's history of prior violations consists of 245 paid assessments for the first 9 months of 1985, 214 in 1984, and 155 in 1983.

Conclusion

After careful review and consideration of the pleadings, and arguments made in support of the joint oral motion to approve the proposed settlement disposition of this case, I

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conclude and find that it 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

The respondent IS ORDERED to pay civil penalties in the settlement amounts shown above within thirty (30) days of the date of this decision. Upon receipt of payment by MSHA this matter is dismissed.

In view of the settlement disposition of the civil penalty case, including the disputed orders in question which were contested, Contest Docket Nos. PENN 85Ä314ÄR, PENN 86Ä7ÄR, and PENN 86Ä8ÄR, ARE DISMISSED.

George A. Koutras
Administrative Law Judge