

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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AUG 5 1986

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 86-64-M
Petitioner	:	A.C. No. 41-03281-05503
	:	
v.	:	Carter Pit
	:	
D. P. FROST CONSTRUCTION CO.,	:	Docket NO. CENT 86-65-M
Respondent	:	A.C. No. 41-02422-05519
	:	
	:	Docket No. CENT 86-66-M
	:	A.C. No. 41-02422-05520
	:	
	:	Yelverton Pit

ORDER APPROVING IN PART AND DENYING IN PART
THE PROPOSED SETTLEMENT AGREEMENT

Before: Judge Broderick

On July 22 and August 4, 1986, the Secretary filed motions to approve settlement agreements in the above cases presently scheduled for hearing (with Docket No. CENT 86-29-M) on September 16, 1986.

Docket No. CENT 86-64-M contains three alleged violations originally assessed at \$689. The parties propose to settle for \$297. Citation 2661194 charged a violation of 30 C.F.R. § 56.11027 because of a sagging work platform with two of eight welds separated. It was assessed at \$168, and the parties propose to settle for \$126 because the area in question is a metal walkway and if it sagged it would contact a flywheel located below it and the resulting sound would have warned of the deteriorated condition of the platform/walkway. In my judgment, the reduction in the penalty is not supported by the motion. Citation 2261195 charged a violation of 30 C.F.R. § 56.15005 because an employee was standing on a conveyor belt shovelling material and was not wearing a safety belt. No handrails were on the belt. It was originally assessed at \$227 and the parties proposed to settle for \$151 because "Defendant states this was an isolated incident ... there was little or no negligence involved since the violation could not have been reasonably predicted." I conclude again that the proposed reduction is not justified by the motion. Citation 2661196 charged a violation of

30 C.F.R. § 56.14003 because the guard on the head pulley was not of sufficient length to protect against a pinch point. The violation was assessed at \$294, and the parties propose to settle for \$20 because "Defendant states that this head pulley is 8' above the ground." Does the government accept this statement? If it is impossible to reach the pinch point, why was the citation issued? The motion does not provide justification for the settlement. Therefore the motion is **DENIED**.

Docket No. CENT 86-65-M contains 20 alleged violations originally assessed at \$1141. The parties propose to settle for \$804. Eleven of the violations were treated as "single penalty assessments" and assessed at \$20 each. The motion states that the parties agree that the proposed penalties for these violations are appropriate. I concur. Citation 2662166 charged a violation of 30 C.F.R. § 56.14008B because of a bench grinder without a tool rest. It was assessed at \$79 and the motion states that the parties agree that the violation occurred and the proposed penalty was appropriate. I concur. Citation 2662178 charged a violation of 30 C.F.R. § 56.12025 because of a loose ground wire and improper fittings in the coarse conveyor box. It was assessed at \$63, and the parties agree that the violation occurred and the proposed penalty was appropriate. I concur. Citation 2661182 charging a violation of 30 C.F.R. § 56.14001 because of an unguarded tail pulley was assessed at \$147. The parties propose to settle for \$110 because the violation "was over-evaluated by the inspector." This statement does not justify the proposed reduction. With respect to citations 2661183 (the violation was originally assessed at \$105, the proposed settlement is for \$781, 2661187 (originally assessed at \$112; proposed settlement \$201, 2662171 (originally assessed at \$79; proposed settlement \$601, 2662175 (originally assessed at \$79; proposed settlement \$201, the motion provides justification for the proposed settlement, and I will approve it. With respect to citations 2662169 (charging a violation of 30 C.F.R. § 56.12030 because of exposed electrical conductors and a leaking fuel valve, originally assessed at \$178; proposed settlement \$134) and citation 2662176 (charging a violation of 30 C.F.R. § 56.11012 because of an open hole in the floor of the generator trailer, originally assessed at \$79; proposed settlement \$201, the motion does not justify the proposed settlement and I will DENY it.

Docket No. CENT 86-66-M contains three citations, two of which charged violations assessed as "single penalty assessments" at \$20 each. The parties propose to settle these violations for the assessed amounts, and I will approve the settlement. Citation 2661186 charges a violation of 30 C.F.R. § 56.11001 because of an opening in a berm at the dump of the crusher feeder and hopper. It was originally assessed at \$112

and the parties propose to settle for \$84. The motion states that the violation was the result of ordinary negligence and "was over-evaluated by the inspector." This statement does not justify the settlement proposal and I will deny it.

The case will be called for hearing in Dallas, Texas commencing September 16, 1986 for all the alleged violations with respect to which I have indicated that I will not approve the proposed settlement agreement.


James A. Broderick
Administrative Law Judge

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