

CCASE:
SOL (MSHA) V. YATES CONSTRUCTION
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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. SE 86-28-M
A.C. No. 31-00052-05501 J2K

v.

Pomona Mine & Mill

YATES CONSTRUCTION CO.,
INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Broderick

On August 22, 1986, the parties filed a Joint Motion to Approve Settlement and to Dismiss this proceeding. A similar motion was filed in the case of Secretary v. Martin Marietta Aggregates, Docket No. SE 86-31-A, with which this proceeding was consolidated by order issued April 18, 1986.

This proceeding involves three alleged violations, one originally assessed at \$2000 and charging a violation of 30 C.F.R. 56.3005, the others each assessed at \$98. By this settlement agreement, the parties propose to amend citation 2385988 charging a violation of 56.3005 to read as follows:

Respondent's employee operating at a mine site on or about April 15, 1985 wrongfully worked between equipment and the pit wall in violation of 30 C.F.R. 56.3012.

The parties represent, and I accept the representation, that the amended citation alleges a violation of the standard more directly applicable to the circumstances of this case. The settlement agreement proposes that Respondent pay the sum of \$1000 for the violation charged in the amended citation, and the assessed amount, \$98 for each of the other alleged violations.

The violation charged in citation 2385988 is serious, since it caused or contributed to a fatal accident. Respondent states that the violation resulted from an employee violating a previously communicated work rule, and the Secretary does not contest this assertion. Respondent has no prior history of inspection under the Act. It is a small operator.

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I have considered the Motion in the light of the criteria in section 110(i) of the Act, and conclude that it should be approved.

Accordingly, IT IS ORDERED that the settlement agreement is APPROVED. Respondent is ORDERED to pay the sum of \$1,196 within 30 days of the date of this decision. Upon payment, this proceeding is DISMISSED. The hearing scheduled August 27, 1986 in Greensboro, North Carolina is CANCELLED.

James A. Broderick
Administrative Law Judge