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CONSOLIDATION COAL V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY,
CONTESTANT

v.

CONTEST PROCEEDING

Docket No. WEVA 86-249-R
Order No. 2706369; 3/24/86

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

Loveridge No. 22 Mine

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

v.

CIVIL PENALTY PROCEEDING

Docket No. WEVA 86-359
A.C. No. 46-01433-03713

Loveridge No. 22 Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DECISIONS

Appearances: W. Henry Lawrence, Esq., Steptoe and Johnson,
Clarksburg, West Virginia, for the Contestant;
William T. Salzer, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for the Respondent.

Before: Judge Koutras

Statement of the Proceeding

These proceedings concern a Notice of Contest filed by the
contestant against the respondent pursuant to section 105(d) of
the Federal Mine Safety and Health Act of 1977, 30 U.S.C.
815(d), challenging the legality of a section 104(d)(2) order
issued to the contestant at its Loveridge No. 22 Mine on March
24, 1986. The civil penalty case concerns a proposal filed by
MSHA for a civil penalty assessment in the amount of \$600 for the
alleged violation in question.

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The contest was heard in Morgantown, West Virginia, on July 29, 1986, and the parties presented testimony and evidence regarding the alleged violation. MSHA presented testimony from its inspectors, and Consolidation Coal relied on the testimony of the mine safety supervisor and preparation plant superintendent. The civil penalty case was assigned to me after the hearing and the closing of the record.

By motion filed with me on September 22, 1986, pursuant to Commission Rule 30, 29 C.F.R. 2700.30, the parties seek approval of a proposed settlement of the civil penalty case. The proposed settlement reflects that MSHA has modified the contested order to a section 104(a) citation, with a corresponding reduction of the assessed degree of negligence from "high" to "moderate," and an amended proposed civil penalty of \$300 which Consolidation Coal agrees to pay.

Discussion

Consolidation Coal is charged with an alleged violation of mandatory safety standard 30 C.F.R. 77.1104, and the condition or practice is described as follows: "Loose coal and coal dust had accumulated throughout the slope belt headhouse on the structures electrical motors and boxes, black in color, and loose coal has also been allowed to accumulate to where the trail roller and tripper belt are running in loose coal creating fire hazard."

In support of the proposed settlement of the civil penalty case, the parties state that they have discussed the six statutory criteria stated in section 110(i) of the Act, and I have reviewed the information supplied by MSHA as part of its pleadings and proposed civil penalty assessment with respect to these issues. In further support of the proposed settlement, Consolidation Coal asserts that it was unable to attend to the cited conditions due to the fact that under a prior order issued on February 8, 1986, access to the belt tail house was barricaded. This assertion is supported by the testimony at the hearing in defense of the alleged violation. MSHA acknowledges that certain access points to the slope belt headhouse were "chained off" as a result of repairs which had to be made to the tripper belt structure leading out of the slope belt headhouse. In view of these mitigating circumstances, MSHA modified the section 104(d)(2) order to a section 104(a) citation, and also modified the degree of negligence.

Conclusion

After careful review and consideration of the testimony and evidence adduced in these proceedings, including the submissions in support of the motion to approve the proposed settlement of the civil penalty 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.

ORDER

Consolidation Coal Company IS ORDERED to pay a civil penalty assessment in the amount of \$300 for the violation in question, and payment is to be made to MSHA within thirty (30) days of the date of these decisions. Upon receipt of payment by MSHA, these proceedings are dismissed.

George A. Koutras
Administrative Law Judge