

CCASE:  
SOL (MSHA) V. TACKETT MINING  
DDATE:  
19861204  
TTEXT:

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. KENT 86-53  
A.C. No. 15-12129-03519

v.

No. 4 Mine

TACKETT MINING, INC.,  
RESPONDENT

DECISION

Appearances: Mary Sue Ray, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee,  
for the Petitioner.

Before: Judge Koutras

Statement of the Case

This proceeding concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment of \$900 for an alleged violation of mandatory safety standard 30 C.F.R. 75.400, as stated in a section 104(d)(1) "S & S" Citation No. 2470592 served on the respondent on August 7, 1985. The citation was issued after an inspector observed an accumulation of loose coal and coal dust to a depth of 1 to 6 inches along a belt conveyor.

The respondent filed a timely answer, and the case was docketed for a hearing in Paintsville, Kentucky, with several other cases during the hearing term November 18-20, 1986. However, in view of a proposed settlement agreement, no testimony was presented at the hearing, and the petitioner was permitted to file the proposed settlement motion for my consideration pursuant to Commission Rule 30, 29 C.F.R. 2700.30, and it was approved from the bench (Tr. 3).

Discussion

In support of the proposed settlement disposition of this case, the petitioner has submitted information pertaining to the six statutory civil penalty criteria found in section 110(i) of the Act. In addition, the petitioner has submitted a full discussion and disclosure as to the facts and circumstances surrounding the issuance of the citation in question, and a reasonable justification for the reduction of the original proposed civil penalty assessment. The proposed settlement requires the respondent to pay a civil penalty assessment of \$300 for the violation in question.

The information submitted by the parties reflects that the respondent is a small mine operator with 11 employees and 25,000 tons of coal production in 1985. A letter from the respondent's CPA reflects that the mine operated at a loss of \$16,384.27, for the year ending December 31, 1985, and expects a loss as high as \$50,000 for 1986. The parties agree that the initial civil penalty proposal of \$900 would affect the respondent's ability to continue in business

Conclusion

After careful review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of this 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

Respondent IS ORDERED to pay a civil penalty in the amount of \$300 in satisfaction of the violation in question within thirty (30) days of the date of this decision and order, and upon receipt of payment by the petitioner, this proceeding is dismissed.

George A. Koutras  
Administrative Law Judge