

CCASE:
JIM RESOURCES V. SOL (MSHA)
DDATE:
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TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judge

JIM WALTER RESOURCES, INC.,
CONTESTANT

v.

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

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

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT

CONTEST PROCEEDINGS

Docket No. SE 86-85-R
Order No. 2812055; 5/14/86

Docket No. SE 86-86-R
Order No. 2812056; 5/14/86

CIVIL PENALTY PROCEEDING

Docket No. SE 86-123
A.C. No. 01-01247-03714

No. 4 Mine

DECISION APPROVING SETTLEMENT
ORDER DISMISSING NOTICES OF CONTEST

Before: Judge Merlin

The parties have filed a joint motion to approve settlements of the two violations involved in these cases. The total of the originally assessed penalties was \$1,900. The total of the recommended settlements is \$600.

The motion discusses both violations in light of the six criteria set forth in section 110(i) of the Mine Safety and Health Act of 1977. Order No. 2812055, the subject of SE 86-85-R, was issued for violation of 30 C.F.R. - 75.316. A scoop operator had knocked down a ventilating curtain and failed to repair it. Order No. 2812056, the subject of SE 86-86-R, was issued for violation of 30 C.F.R. - 75.200. This same scoop operator proceeded to clean up coal from under an unsupported roof. Both orders were issued pursuant to Section 104(d)(2) of the Act.

Further investigation revealed that the scoop operator had been ordered to clean up a different face. Through no fault of

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the supervisor, the scoop operator went to the wrong face. The scoop operator was later disciplined. In light of these facts, MSHA has reduced these 104(d)(2) orders to 104(a) citations because the violations were not the result of an unwarrantable failure on the part of the mine operator. In addition, these facts show that negligence was less than was originally believed. A reduction in the proposed penalty for Citation No. 2812055 from \$900 to \$300 is now recommended. A reduction in the proposed penalty for Citation No. 2812056 from \$1,000 to \$300 is also recommended.

The representations and recommendations of the parties are accepted. The mine operator has withdrawn its request for a hearing.

Accordingly, it is ORDERED that the motion to approve settlements is GRANTED.

It is further ORDERED the above-captioned notices of contest are DISMISSED.

It is further ORDERED that the mine operator is to pay \$600 within 30 days of the date of this decision.

Paul Merlin
Chief Administrative Law Judge