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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.

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

CONTEST PROCEEDINGS

Docket No. WEVA 86-215-R
Order No. 2711104; 2/27/86

Docket No. WEVA 86-239-R
Order No. 2713431; 3/14/86

Docket No. WEVA 86-240-R
Order No. 2711566; 3/20/86

Humphrey No. 7 Mine

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

v.

CONSOLIDATION COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 86-328
A.C. No. 46-01453-03701

Docket No. WEVA 86-329
A.C. No. 46-01453-03702

Humphrey No. 7 Mine

CORRECTED DECISION APPROVING
SETTLEMENT AND DISMISSING PROCEEDINGS

Before: Judge Broderick

The Secretary's Motion to Approve Settlement in the above cases stated that an agreed settlement had been reached between the parties in the amount of \$1325. This was in error, and the error was repeated in my decision. The decision issued March 5, 1987, is CORRECTED to read as follows:

On February 19, 1987, the Secretary filed a motion for an order approving a settlement agreement in the two civil penalty cases listed above. Three violations are involved originally assessed at a total of \$2000. The parties propose to settle for a total payment of \$1075.

Order 2711566 was issued alleging a violation of 30 C.F.R. 75.1725 because a feeder wire cut off switch handle was missing. The motion states that the violation should not have been deemed unwarrantable and the action has been modified from a

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section 104(d)(2) order to a section 104(a) citation. Because the negligence factor has been reduced, the parties propose a reduction in the penalty from \$650 to \$150. Order 2713431 alleged a violation of 30 C.F.R. 75.1725(d) because a junction box on a portal bus motor was open. The bus had not been operated for a week, and the operator has a practice of checking buses before putting them to use. For that reason the motion proposes a reduction in the penalty from \$650 to \$450. Order No. 2711104 charged a violation of 30 C.F.R. 75.1403(d) because the clearance space on the side at the underground shop switch had sloughage and dirt on the bottom. The parties propose a reduction in the penalty from \$700 to \$475 because the sloughage was on the tight side of the track and not on the side with the walkway.

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, the settlement is APPROVED and, Respondent having paid, the case is DISMISSED.

IT IS FURTHER ORDERED that the contest proceedings, Docket Nos. WEVA 86-215-R, WEVA 86-239-R, and WEVA 86-240-R are with the consent of the parties DISMISSED.

James A. Broderick
Administrative Law Judge