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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. WEVA 86-482
A.C. No. 46-01867-03691

v.

Blacksville No. 1 Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding 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 in the amount of \$168 for an alleged violation of mandatory safety standard 30 C.F.R. 75.200, as stated in a section 104(a) Citation No. 2712924, issued at the mine on August 5, 1986.

The respondent filed a timely answer and contest, and the case was scheduled for hearing in Morgantown, West Virginia, on April 21, 1987. However, the petitioner has filed a motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of a settlement of the case. The proposed settlement agreement requires the respondent to pay a civil penalty assessment in the amount of \$30 for the violation in question.
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.

In support of its argument with respect to the reduction of the initial civil penalty assessment, petitioner states that the citation was issued when the inspector found that the approved roof-control plan was not being complied with on the PÄ3 section. The approved roof-control plan requires maximum 60Äinch spacing under normal roof conditions and 48Äinch spacing when there are exposed roof conditions. The inspector observed four rows of bolts in the No. 2 entry spaced 58 to 66 inches apart, and the bolts had been incorrectly installed on the previous midnight shift. However, the respondent was in the process of repairing the cited condition at the time the inspector issued the violation. When the day shift came on the section that morning, the continuous miner operators observed the bolt spacing problems and alerted the section foreman, and initial steps had already been taken to rebolt the area. The continuous miner had been moved back and supplies brought to the immediate area.

The petitioner asserts that while the roof-control plan required 60Äinch bolt spacing for non-exposed roof and 40-inch spacing for exposed roof, it was the inspector's opinion that the roof was exposed in this area and, therefore, subject to the 48 inch spacing requirement. The respondent, on the other hand, was of the opinion that not all of the areas cited by the inspector constituted exposed roof, thus, making two of the areas within the 60Äinch spacing requirement. The respondent would present evidence by way of extensive testimony that not all of the roof was exposed and, therefore, the violation was not as extensive as cited by the inspector.

The petitioner states that the reduced civil penalty assessment properly considers the gravity and probability of harm associated with the violation. Recognizing the fact that inadequate roof bolting exposed miners working in the area to the hazards of a roof fall, petitioner asserts that the fact that the violation came into existence during the end of the last shift and actions were taken to correct the condition would reduce the likelihood of such an occurrence. Further, the petitioner points out that the respondent clearly demonstrated a good faith effort to abate the violative condition in that roof bolters were about to install additional bolts, and in fact, four additional rows of bolts were installed to reduce the spacing within 1 hour that the condition was cited.

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 \$30 in satisfaction of the citation 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