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SOL (MSHA) V. EUGENE MCPHERSON
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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. LAKE 86-101-M
A.C. No. 33-00646-05503-A

v.

Somerset Lime & Stone

EUGENE C. MCPHERSON,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding under section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(c), brought by the petitioner against the respondent Eugene C. McPherson, mine manager at the Somerset Lime and Stone Mine, operated by Somerset Lime and Stone, Inc., near Somerset in Perry County, Ohio. Respondent is charged as an agent of the corporate mine operator with knowingly authorizing, ordering, or carrying out said operator's violation of mandatory safety standard 30 C.F.R. 56.9003 cited in a section 107(a) Å 104(a) Order No. 2513572 issued to the corporate mine operator on May 13, 1985. The order states as follows: "The brakes were inoperative on the Hough No. 90 serial number 1037. This front end loader is used in the stone storage yard to load customer trucks."

The petitioner states that pursuant to section 110(a) of the Act, the mine operator was assessed a civil penalty of \$500 for its violation cited in the order, and that it became a final order of the Commission on September 17, 1985, under MSHA Assessment Office Case No. 33Å00646-05502.

In this proceeding, a civil penalty of \$250 was proposed by the petitioner against respondent McPherson for his alleged violation under section 110(c) of the Act. Respondent now

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advises that he no longer wishes to contest this violation and has tendered to the petitioner a money order in the amount of \$100 in full settlement of this proceeding.

This case was scheduled for hearing in Zanesville, Ohio, on May 7, 1987. However, the petitioner has now filed a motion pursuant to 29 C.F.R. 2700.30, seeking approval of the proposed settlement.

Discussion

The petitioner submits that the alleged violation was serious and that the respondent was grossly negligent in authorizing the cited end loader to be operated with inadequate brakes. However, in mitigation, the petitioner states that the respondent advises that he is now 73 years old, has a heart problem, is unemployed, and is living off of social security. Under these special circumstances, and in full consideration of the civil penalty criteria under section 110(i) of the Act, the petitioner submits that the settlement of \$100 is reasonable and in the public interest.

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

The respondent IS ORDERED to pay a civil penalty in the amount of \$100 in full satisfaction of the alleged violation in question. Since it appears that the petitioner is in receipt of said payment, this matter IS DISMISSED.

George A. Koutras
Administrative Law Judge