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SOL (MSHA) V. COLUMBIA CEMENT
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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 86-38-M
A.C. No. 33-03990-05507

v.

Jonathan Limestone Mine

COLUMBIA PORTLAND CEMENT
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 \$2,000 for an alleged violation of mandatory safety standard 30 C.F.R. 56.12Å16, as stated in a section 104(a) Citation No. 2518303, issued at the mine on July 29, 1985.

The respondent filed a timely answer and contest, and the case was scheduled for hearing in Zanesville, Ohio, on May 6, 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 \$1,000 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.

The citation in this case was issued after an MSHA investigation into an accident which occurred on July 27, 1985, which resulted in serious disabling injuries to an electrician when he entered a kiln precipitator hopper with the feed-out screw conveyor running and was caught in the screw. The electrician's right leg was severed below the knee. The electrical power switch for the screw conveyor had not been deenergized or locked out. The cited standard, 30 C.F.R. 56.12Å16, requires that electrically powered equipment be deenergized before mechanical work is done on such equipment.

Petitioner states that the original civil penalty assessment amount was based on a "special assessment" made in accordance with 30 C.F.R. 100.5, due to the occurrence of the serious nonfatal accident. However, petitioner asserts that there are mitigating circumstances which justify a reduction in the original penalty amount. In this regard, petitioner states that the electrician had not started the mechanical work when the accident occurred and that he was accidentally knocked into the hopper and into the moving screw conveyor. The electrician did not intend to enter the precipitator at the time of the accident as his belt, tools and radio had been left outside and he had only intended to check the dust level to the hopper at the time of the accident.

Petitioner asserts that the employee in question was an experienced electrician who had received training from the respondent on lock out procedures, and that the respondent had a history of training employees on such procedures. Petitioner also points out that the electrician's foreman had given him instructions and warned him to lock out the screw conveyor before entering the precipitator. Further, petitioner states that the mine is a small operation, and that during the 24Åmonths preceding the issuance of the citation, the respondent had received two assessed violations.

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 \$1,000 in satisfaction of the citation in question within

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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