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SOL (MSHA) V. HELVETIA COAL
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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. PENN 87-92
A.C. No. 36-00917-03653

v.

Lucerne No. 6 Mine

HELVETIA COAL COMPANY,
RESPONDENT

HELVETIA COAL COMPANY,
CONTESTANT

CONTEST PROCEEDINGS

Docket No. PENN 87-51-R
Citation No. 2693665; 11/10/86

v.

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

Docket No. PENN 87-52-R
Citation No. 2693666; 11/10/86

Docket No. PENN 87-53-R
Citation No. 2693667; 11/10/86

Docket No. PENN 87-54-R
Citation No. 2693668; 11/10/86

Docket No. PENN 87-55-R
Citation No. 2693669; 11/10/86

Docket No. PENN 87-56-R
Citation No. 2693670; 11/10/86

Docket No. PENN 87-57-R
Citation No. 2693671; 11/10/86

Docket No. PENN 87-58-R
Citation No. 2693672; 11/10/86

Docket No. PENN 87-59-R
Citation No. 2693673; 11/10/86

Docket No. PENN 87-60-R
Citation No. 2693674; 11/10/86

Lucerne No. 6 Mine

DECISION APPROVING SETTLEMENT

ORDER TO PAY

ORDER OF DISMISSAL

Before: Judge Merlin

The Solicitor has filed a motion to approve settlements of the ten violations involved in this case. The total of the originally assessed penalties was \$1,000 and the total of the proposed settlements is \$605.

The motion discusses the violations in light of the statutory criteria set forth in section 110(i) of the Act. The subject citations were issued for violations of 30 C.F.R. 48.27(c), because the operator had assigned ten miners to participate in the moving of a piece of equipment under energized trolley wire who were not specifically trained or instructed regarding this task. The Solicitor represents that a reduction from the original assessment is warranted for the following reasons:

The reduction is proposed because of a genuine dispute or misunderstanding between the parties regarding the requirements of task training. The operator was of the opinion that the miners had to be task trained only if and when they became needed in the operation and only for the specific task they would perform. For example, a miner would be specifically task trained on how to jack up the piece of equipment when and if it was required during the move. MSHA required, however, that the miners be task trained and instructed in the general safety aspects of moving equipment under energized trolley wire once they were assigned the job and before they were actually placed. Therefore, if an emergency situation occurred, as one did, every miner involved would have been trained in the safety procedures of the task. Because of this honest difference in interpretation, the parties propose that the negligence of the violations be reduced to moderate.

The subject citations were originally assessed at \$100 each. The motion proposes that Citation Nos. 2693665, 2693666, 2693667, 2693670, 2693671, 2693672, and 2693673 be reduced to \$65 for the violation. With respect to Citation Nos. 2693668, 2693669, and 2693674, the motion proposes an assessment of \$50, because "the

~1249

three miners cited in [those] citations %y(3)27 had been trained as motormen. [Thus], [t]heir training would have included some aspects of moving off-track equipment."

I accept the Solicitor's representations and approve the recommended settlements. The parties should be aware, however, that I assume from the proposed settlement that the operator now understands what is required of it.

Accordingly, the motion to approve settlements is GRANTED and the operator is ORDERED TO PAY \$605 within 30 days from the date of this decision.

It is further ORDERED that the corresponding review cases, Docket Nos. PENN 87Ä51ÄR, PENN 87-52-R, PENN 87-53-R, PENN 87Ä54ÄR, PENN 87-55-R, PENN 87-56-R, PENN 87-57-R, PENN 87-58-R, PENN 87Ä59ÄR and PENN 87-60-R, pending before me are hereby DISMISSED.

Paul Merlin
Chief Administrative Law Judge