

CCASE:
SOL (MSHA) V. CONSOLIDATION COAL
DDATE:
19871116
TTEXT:

~1950

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 87-42(B)
A.C. No. 46-01453-03735

v.

Humphrey No. 7 Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT
AND DISMISSING PROCEEDING

Before: Judge Broderick

Two citations remain in this docket, 2703915 and 2713101. Citation 2713124, transferred to this docket from WEVA 87-42(A) by order of May 19, 1987, was actually a part of the settlement approved by order of May 20, 1987, in Docket WEVA 87-42(A). See letter from Michael Peelish, Esq., dated October 30, 1987, together with copies of the payments made for the approved settlement. Docket WEVA 87-42(A) is closed.

The Secretary moved to withdraw this civil penalty petition with respect to citation 2713101 and to vacate the citation. The citation alleged a violation of 30 C.F.R. 50.10 because Consol did not immediately contact MSHA upon the occurrence of an "accident." The term accident is defined as an injury which has a reasonable potential to cause death. It was originally assumed that the injury involved here was a serious electrical shock. Further investigation, including hospital and medical reports and a written statement from the injured employee, disclosed that grease burns to his hands were the only injuries he sustained and that he did not suffer electrical shock. Therefore, the motion contends that the injury involved was not life threatening. Based on the representations in the motion, it is GRANTED. The penalty proceeding is DISMISSED as it relates to citation 2713101 and the citation is VACATED.

Citation 2703915 alleges a violation of 30 C.F.R. 75.1003 because a trolley wire was not adequately guarded. The violation was originally assessed at \$1000, and the parties

~1951

propose to settle for \$800. The motion states that the employee who was injured, a certified electrician, was directed to guard the wire before performing the work on the track, but he failed to do so. This mitigates Consol's negligence. 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 agreement is APPROVED, and subject to the payment by Consol of the \$800, this proceeding is DISMISSED.

James A. Broderick
Administrative Law Judge