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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. WEST 86-122
A.C. 05-03455-03545

v.

Southfield Mine

ENERGY FUELS COAL, INC.,
RESPONDENT

DECISION

Appearances: James H. Barkley, Esq. and Susan Bissegger, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for Petitioner;
Phillip D. Barber, Esq., Welborn, Dufford, Brown and Tooley, Denver, Colorado, for Respondent.

Before: Judge Cetti

Statement of the Case

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (Mine Act). The Secretary of Labor on behalf of the Mine Safety and Health Administration, charges the operator of the Southfield Mine with two violations of 30 C.F.R. 75.701 mandatory mine safety grounding standard.

This proceeding was initiated by the Secretary with the filing of a proposal for assessment of civil penalties. The operator filed a timely appeal contesting the existence of each of the alleged violations and the amount of the proposed civil penalties. Hearings were held on these issues on July 8 and 9, 1987 at Denver, Colorado before Administrative Law Judge Michael A. Lasher, Jr., who later entered an Order of Recusation.

This matter was reset for a hearing before me on March 22, 1988 at Denver, Colorado. Prior to that date the parties filed a joint motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of a settlement of the case.

Under the joint motion submitted by the parties, Respondent agrees to use metal grounding straps on all metal couplings, including but not limited to couplings between trailing cables and power centers, and trailing cables and the equipment to which the cables supply power. The two Citations, Nos. 2830956 and 2830957, as issued, charged the Respondent with two significant and substantial violations of the grounding standard, 75.701. The Secretary agrees to amend Citation No. 2830956 and Citation No. 2830957 to reflect that such Citations are non-significant and substantial. The Secretary states that this amendment is based on the fact that even though Respondent failed to have the required grounding straps, the system used by Respondent provided some limited grounding. In return, Respondent withdraws its contest to the Citations as amended and withdraws its contest to the Secretary's proposed penalties of \$68.00 for each of the violations cited.

In support of the proposed settlement disposition of this case, the parties further agree and stipulate that in the 24 months prior to the inspection, Respondent was inspected a total of 12 days and has received 0 assessed violations; the coal mine in question produces 313,099 tons of coal per year and employs approximately 95 employees. Payment of the proposed penalties will not impair the Respondent's ability to continue in business.

Conclusion

After careful review and consideration of the pleadings and the evidence presented at the July 8 and 9, 1987 hearings, I conclude and find that the proposed settlement disposition is reasonable, appropriate, and in the public interest. Accordingly, the motion of the parties to amend Citation No. 2830956 and Citation No. 2830957 and to permit Respondent to withdraw its contest to the Citations as amended, is granted, and the Settlement is approved.

ORDER

Respondent is ordered to pay civil penalties in the settlement amount totaling \$136.00 in satisfaction of Citation No. 2830956 and Citation No. 2830957 within 40 days of the date of this Decision and Order and, upon receipt of payment by the Petitioner, this proceeding is dismissed.

August F. Cetti
Administrative Law Judge