

CCASE:  
PHELPS DODGE V. SOL (MSHA)  
DDATE:  
19880330  
TTEXT:

~481

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

PHELPS DODGE CORPORATION,  
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. WEST 87-102-RM  
Citation No. 2674914; 1/21/87

Morenci Mine & Mill

Mine ID 02Ä00024

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

v.

PHELPS DODGE CORPORATION,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEST 88-51-M  
A.C. No. 02-00024-05519

Phelps Dodge Morenci Inc.

DECISION APPROVING SETTLEMENT  
ORDER TO PAY

Before: Judge Merlin

These proceedings are a petition for the assessment of a civil penalty for the one violation involved and the related notice of contest proceeding.

On February 8, 1988, the parties submitted a motion for settlement. The originally assessed amount was \$6,000 and the proposed settlement was for \$3,000. On March 8, 1988, a lengthy telephone conference call was held with both parties and the Administrative Law Judge during which the case was discussed in detail. Thereafter, the parties again conferred and on March 18, 1988 the parties submitted a new motion for settlement with a proposed settlement of \$4,500. I have concluded the second motion may be approved.

On January 21, 1987, MSHA conducted an investigation of a fatal mining accident that took place on the surface of the Morenci Mine and Mill on January 16, 1987. The investigation concluded that a haulage truck dumped too close to the edge of a bank that had been undercut by a steam shovel. The bank col-

~482

lapsed under the weight and the truck overturned down a 50 foot bank. The driver was fatally injured. The subject citation arose from this incident.

The parties motion discusses the violation in light of the six statutory criteria set forth in section 110(i) of the Federal Mine Safety and Health Act of 1977. The citation was issued for a violation of 30 C.F.R. 56.9055 because loads were not dumped back from the edge of the bank when evidence suggests that the ground may fail to support the weight of the vehicle. The parties represent that a reduction from the original assessment is warranted because negligence was less than originally assessed in that the condition which contributed to the accident had existed for a very short period of time. Additionally, the operator was not wearing a seat belt at the time of the accident, even though the operator instructed its employees to wear them at all times. It appears that the operator did all it could with respect to insuring the wearing of seat belts by its employees. I accept the foregoing and representations and approve the recommended settlement which I believe is sufficient to comport with the purposes of the statute.

Accordingly, the joint motion to approve settlement is GRANTED and the operator is ORDERED TO PAY \$4,500 within 30 days of the date of this decision.

Based upon the foregoing, the contest proceeding is hereby DISMISSED.

Paul Merlin  
Chief Administrative Law Judge