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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. WEVA 88-90
A.C. No. 46-01318-03789

v.

Robinson Run Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

DISAPPROVAL OF SETTLEMENT
ORDER TO SOLICITOR TO SUBMIT INFORMATION

Before: Judge Merlin

The Solicitor has filed a motion to approve settlement of the violation involved in this case.

This case involves a violation of 30 C.F.R. 75.1720-1 in that six miners were not wearing distinctively colored hard hats. The penalty was originally assessed at \$311 and the proposed settlement is for \$250. In her motion, the Solicitor asserts that, among other things, the reduction is warranted because gravity was less than originally thought. The motion states that the employees involved were maintenance personnel who were temporarily assigned to the mine to repair equipment. The motion further states that at all times these employees were accompanied by a superintendent who "was aware of their lack of experience and certification." According to the Solicitor's motion, there was little likelihood that these miners would be confused with experienced miners.

The Commission and its Judges bear a heavy responsibility in settlement cases pursuant to section 110(k) of the Act which provides:

(k) No proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission. * * *

~780

See S.Rep. No. 95-181, 95th Cong., 1st Sess. 41-5 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 632-633 (1978).

Penalty proceedings before the Commission are de novo. Neither the Commission nor its Judges are bound by the Secretary's proposed penalties. Rather, they must determine the appropriate amount of penalty, if any, in accordance with the six criteria set forth in section 110(i) of the Act. *Sellersburg Stone v. Federal Mine Safety and Health Review Commission*, 736 F.2d 1147 (7th Cir.1984).

The Commission has recently reaffirmed the authority of its Judges to review and, where necessary, disapprove settlements, stating:

* * *. Settlement of contested issues and Commission oversight of that process are integral parts of dispute resolution under the Mine Act. 30 U.S.C. 820(k); see *Pontiki Coal Corp.*, 8 FMSHRC 668, 674 (May 1986). The Commission has held repeatedly that if a judge disagrees with a penalty proposed in a settlement he is free to reject the settlement and direct the matter for hearing. See, e.g., *Knox County Stone Co.*, 3 FMSHRC 2478, 2480-81 (November 1981). A judge's oversight of the settlement process "is an adjudicative function that necessarily involves wide discretion." *Knox County*, 3 FMSHRC at 2479.

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Secretary of Labor v. Wilmot Mining Company, 9 FMSHRC 686 (April 1987).

Based upon the Solicitor's representations set forth above, I cannot conclude that the recommended reduction in the penalty is warranted. If anything, the facts as set forth by the Solicitor make the violation appear more serious and highlight the operators negligence. The operator should have taken particular care because the miners were inexperienced. In addition, their inexperience and lack of certification put them at greater peril and therefore, increased gravity. Under the circumstances the original assessment seems modest indeed.

~781

Accordingly, the Solicitor is ORDERED to submit additional information in support of her motion for settlement within 20 days from the date of this order otherwise this case will promptly be set for hearing.

Paul Merlin
Chief Administrative Law Judge