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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

v.

BOORHEMÄFIELDS, INCORPORATED,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 88-56-M
A.C. No. 41-03018-05513

McDaniel Pit

ORDER REJECTING PROPOSED SETTLEMENT

By letter and attachment received August 22, 1988, the petitioner filed a motion seeking approval of a proposed settlement by the parties for section 104(a) "S & S" Citation No. 3061374, September 10, 1987, 30 C.F.R. 56.9073. The citation was assessed at \$276, and the petitioner seeks approval of a payment of \$20 by the respondent in settlement of the violation.

A review of the pleadings reflects that the inspector issued the citation after finding a back hoe with bad brakes and a broken tie rod broken away from the frame on the left side of the vehicle, parked at the shop area of the mine. The inspector found that the vehicle had not been tagged to prevent anyone from operating it, as required by the cited standard. Abatement was achieved within approximately 3 hours of the issuance of the citation, and this was accomplished by the mine superintendent removing the key from the vehicle.

The inspector's gravity findings, as shown on the face of the citation, reflect that an injury was reasonably likely, with permanently disabling results, and that one person would be exposed to such an injury. In support of the reduction of the initial penalty assessment for the violation, petitioner makes the following argument at page two of its motion:

Probability of injury was overevaluated since very few employees were exposed to the risk, these employees were not, during the normal course of

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their work, exposed to the risk with any great frequency, or were not in the zone of danger, and the employees were not working under stress or where their attention would be distracted.

I fail to understand the relationship between an untagged parked vehicle with bad brakes and a broken tie-rod, and the petitioner's statements that few employees were exposed to a risk, that they would not in the normal course of their work be exposed to the risk with any great frequency, were not in the zone of danger, and were not working under stress or where their attention would be distracted. Such unexplained statements raise an inference that the untagged vehicle posed a hazard, and that employees may have been exposed to such a hazard.

Although the respondent's answer suggests that the cited vehicle was parked at the shop for repairs, and makes reference to a "report" prepared by the inspector stating that the vehicle was parked at the shop for repairs, petitioner's motion does not include any such information. Further, the fact that abatement was achieved by the removal of the ignition key some 3 hours after the citation was issued, raises a question as to why the key was not immediately removed from the vehicle when it was parked if in fact it was removed from service for repairs.

ORDER

In view of the foregoing, the proposed settlement IS REJECTED. The petitioner is directed to re-submit it within ten (10) days of the receipt of this Order with a clarification or explanation of its previously submitted argument in support of the civil penalty reduction in question.

George A. Koutras
Administrative Law Judge