CCASE:

SOL (MSHA) & D. MILLER V. CONSOLIDATION COAL

DDATE:

19881021

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

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| SECRETARY OF LABOR, | DISCRIMINATION PROCEEDING |
| MINE SAFETY AND HEALTH | |
| ADMINISTRATION (MSHA), | Docket No. WEVA 88-165-D |
| ON BEHALF OF | MSHA Case No. MORG CD 87-27 |
| DAVID H. MILLER, | |
| COMPLAINANT | Ireland Mine |
| v. | |
| | |
| CONSOLIDATION COAL COMPANY, | |
| RESPONDENT | |

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This proceeding concerns a complaint of alleged
discrimination filed by the Secretary of Labor on behalf of David
H. Miller against the respondent pursuant to section 105(c)(1) of
the Federal Mine Safety and Health Act of 1977, 30 U.S.C.
815(c)(1). The complaint alleges that on or about September 11,
1987, Mr. Miller was discriminated against because the respondent
interfered with his right as a representative of miners to
accompany a Federal mine inspector during his inspection of the
mine. The complaint was subsequently amended by the Secretary to
include a proposal for an assessment of a civil penalty against
the respondent for the alleged act of discrimination.

The respondent filed a timely answer denying that it
discriminated against Mr. Miller, and the matter was scheduled
for a hearing in Wheeling, West Virginia, on Tuesday, June 14,
1988. However, the hearing was cancelled after the parties
advised me that they had reached a proposed settlement of the
case. The parties have now filed a joint motion for approval of
the proposed settlement.

Discussion

In support of the proposed settlement disposition of this
case, the Secretary has submitted information pertaining to the

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six statutory civil penalty criteria found in section 110(i) of
the Act. In addition, the complainant David H. Miller states that
he has voluntarily consented to the agreement reached on his
behalf by the Secretary, and that he will withdraw his complaint
upon the respondent's posting of a notice to employees that it
will comply with the provisions of sections 103(f) and 105(c) of
the Act, and payment of a civil penalty assessment in the amount
of $2,000 to MSHA's Office of Assessments. The respondent has
agreed to post the requisite notice at the mine and to pay a
civil penalty assessment of $2,000.

    In further support of the settlement, the parties state that
Mr. Miller received no disciplinary action from the respondent as
a result of his attempts to exercise his rights as the walkaround
representative of miners and that the respondent did not document
the occurrence in question for purposes of placing a record of
the incident in his personnel file. Under these circumstances,
the parties are in agreement that the gravity of the violation
should be minimally reduced from the initial proposed range of
$2,500 to $3,000 to $2,000.

### Conclusion

    After careful review and consideration of the settlement
terms and conditions executed by the parties in this proceeding,
including Mr. Miller, I conclude and find that the proposed
settlement reflects a reasonable resolution of the complaint
filed by the Secretary on Mr. Miller's behalf, and that it is in
the public interest. Since it seems clear to me that the parties
are in agreement with the proposed settlement disposition of the
complaint, I see no reason why it should not be approved. I also
find no reason for not approving the reduction of the initial
proposed civil penalty assessment.

### ORDER

    The joint settlement motion filed by the parties IS GRANTED
and the settlement IS APPROVED. The respondent IS ORDERED to
fully comply with the terms of the settlement and to immediately
post the aforementioned notice at a conspicuous place at the
mine. The respondent IS FURTHER ORDERED to pay to MSHA a civil
penalty assessment of $2,000, for the violation in question, and
payment is to be made within thirty (30) days of the date of this
decision and order. Upon receipt of payment by MSHA, and full
compliance with the terms of the settlement, this matter is
dismissed.


                                George A. Koutras
                                Administrative Law Judge