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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.

CONSOLIDATION COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 88-244
A.C. No. 46-01318-03819

Robinson Run No. 95 Mine

DECISION

Appearances: Joseph T. Crawford, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia,
Pennsylvania, for Petitioner;
Michael R. Peelish, Esq., Consolidation Coal
Company, Pittsburgh, Pennsylvania, for Respondent.

Before: Judge Merlin

This case is a petition for the assessment of three civil penalties filed by the Secretary of Labor against Consolidation Coal Company. At the hearing, the parties advised that they had reached settlements in all three orders and were prepared to make their recommendations on the record. As appears herein, this was done. This hearing took place at the same time as other cases involving the parties were heard on the merits.

Order No. 2897149 was issued for a violation of 30 C.F.R. 75.400 because combustible material had accumulated along the No. 1 mother belt conveyor and loose coal had accumulated under and along the belt at intermittent locations. The original assessment was \$1100 and the parties recommended a settlement of \$850. The Solicitor reported at the hearing that negligence was not as high as had originally been thought. He stated that at the time the order was issued the operator already had individuals in the process of cleaning up. There had been an intermittent but recurring problem with the belt which was constantly being repaired causing spillage to occur. However, the operator was attempting to deal with the problem. Operator's counsel pointed out that this was a very long belt which could become unaligned very quickly and when the operator attempted to realign the belt, spillage happened. The violation admittedly was serious. I accept the representations of counsel and based

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thereon approve the recommended settlement which remains a substantial amount.

Order 2897348 was issued for a violation of 30 C.F.R. 75.1403 because a left track switch had a missing barrel, making it unsafe to throw the switch. The order was based upon a prior safeguard which required all track switches be provided with switch throws, bridle bars and barrels. The original assessment was \$1000 and the parties recommended a settlement of \$650. Here again, the Solicitor advised at the hearing that negligence was not as high as had originally been thought. According to the Solicitor, the condition was first observed between one a.m. and three a.m. on Sunday morning. The mine was idled on the Sunday day shift and there was no repair crew available to make the correction on that shift or on the subsequent evening shift. The first repair crew did not operate until the next morning on the 12 a.m. to 8 a.m. shift. That crew was en route on the next morning to repair the missing barrel when they found a broken rail which had to be immediately replaced. While the crew was repairing the rail, the inspector cited the subject condition. In any event, the cited condition was corrected within fifteen minutes of the time it was discovered by the inspector. The crew caught up to the inspector and abated the condition forthwith. The violation was serious. I accept the representations of counsel and based thereon, approve the recommended settlement which remains a substantial amount.

Order 2897200 was issued for a violation of 30 C.F.R. 75.200 because the approved roof plan was not being met with respect to pillar blocks. The plan required that prior approval be obtained from the district manager before splitting the pillar blocks. The operator failed to obtain approval. The original assessment was \$700 and the proposed settlement is for this amount. The Solicitor represented that although a violation existed, it was not significant and substantial because occurrence of an adverse event was unlikely. At the hearing I rejected this rationale and found that the violation was serious, pointing out that gravity is not synonymous with significant and substantial. I approve the recommended settlement because it is consonant with a serious violation.

In light of the foregoing, it is Ordered that the recommended settlements be Approved.

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It is further Ordered that the operator pay \$2200 within 30 days from the date of this decision.

Paul Merlin
Chief Administrative Law Judge