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SOL (MSHA) V. BOWLING MOUNTAIN MINING
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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. KENT 88-133
A.C. No. 15-14701-03524

v.

Mine No. 2

BOWLING MOUNTAIN MINING
CORPORATION
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Maurer

On December 29, 1988, the Secretary of Labor on behalf of the parties to this action, filed a motion to approve the settlement negotiated between them. At issue in this case are five violations, originally assessed at \$9300 in the aggregate. Settlement is proposed at \$7000.

The above-referenced violations were discovered as a result of on investigation into a fatal roof fall accident which occurred on September 28, 1987, killing Truman Faulkner, an acting foreman at the mine. More particularly, the operator was cited for a violation of 30 C.F.R. 75.200 because it failed to provide additional roof support after encountering adverse roof conditions, as required by its roof control plan. Mud seams, indicating adverse roof conditions, had been encountered, but no additional support was ordered set by Faulkner. This negligence contributed to his death. The company was cited for another, separate violation of 30 C.F.R. 75.200 because the acting foreman, Faulkner, failed to install temporary roof support before working on unsupported roof, also as required by its roof control plan. The roof fall that killed Faulkner was directly attributable to this violation.

The operator was also cited for not conducting the required pre-shift examination of the mine since September 24, 1987, and more particularly, on September 28, 1987, the day Faulkner was killed. This is a serious violation of 30 C.F.R. 75.303, although it does not appear as though this violation directly contributed to Faulkner's death.

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Additionally, the respondent was cited for a violation of 30 C.F.R. 48.6, because the operator had not provided newly employed experienced miner training to the deceased miner, Truman Faulkner, although he had been working at the mine for approximately three (3) weeks at the time of his death.

Lastly, the respondent was cited for a violation of 30 C.F.R. 50.10 because the operator failed to report the roof fall accident which caused the fatal injury to Truman Faulkner. MSHA was notified of the accident by a state mine inspector, but did not receive direct notification from the operator.

The Solicitor states that mining of coal at the mine where the violations occurred has ceased and this mine has now been sealed.

In support of the proposed settlement, the Solicitor further states his belief that approval of this settlement is in the public interest and that the circumstances presented warrant the reduction in the original civil penalty assessments for the violations in question. Further, he has submitted a detailed discussion and disclosure as to the facts and circumstances surrounding the issuance of the citations and orders, as well as a full explanation and justification for the proposed reduction.

I accept the Solicitor's representations and approve the settlements.

ORDER

The operator, and by agreement, Mr. Charles E. McCullah, President and principal stockholder of Bowling Mountain Coal Company, Inc., d/b/a Bowling Mountain Mining Corporation, personally, is ordered to pay \$7000 in eight equal monthly installments of \$777.77 and one last installment of 777.84, beginning November 1, 1988, and payable by the first day of each month thereafter, until paid in full. Upon receipt of payment in full by the Secretary, this case is dismissed.

Roy J. Maurer
Administrative Law Judge