

CCASE:  
SOL V. MCFARLAND & HULLINGER  
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TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
February 22, 1989

SECRETARY OF LABOR,	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	
ADMINISTRATION (MSHA),	Docket No. WEST 88-328-M
Petitioner	A. C. No. 42-01153-05501
v.	Kennecott Carr Fork

MCFARLAND & HULLINGER,  
Respondent

DECISION APPROVING SETTLEMENT  
ORDER TO PAY

Before: Judge Merlin

On December 22, 1988, the Solicitor submitted a motion to approve settlement of the three violations involved in this case. On January 13, 1989, I issued an order approving settlement for two of the violations, disapproved the settlement for the remaining violation and ordered the Solicitor to submit additional information for that violation. The Solicitor now has submitted an amended motion containing the required additional information.

The one citation remaining in this case was issued for a violation of 30 C.F.R. 57.9037 because a dump truck had been left on a grade with the parking brakes on, but the wheels neither blocked nor turned into a bank or rib. The truck started to roll and the driver was fatally injured as he attempted to climb aboard. The penalty was originally assessed at \$1,000 and the proposed settlement is for \$800. The Solicitor represents that the reduction is warranted because operator negligence is less than originally thought. The Solicitor advises in this respect as follows:

"Prehearing preparation had revealed that Melvin Steward, the decedent, had earlier in the day witnessed a highway accident which resulted in the death of an elderly gentleman who was killed when his camper ran a stop sign. This occurrence greatly disturbed and upset Mr. Steward. In fact, he not only telephoned his wife to relate his observations but decided to tell the shop lead man Ivan Zenger what he had witnessed. His idiosyncratic behavior in locking the truck brakes yet failing to lock the trailer brakes can only be explained by his agitated state of

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mind. Secondly, it was disclosed that Mr. Zenger was not a shop foreman but a lead man who did not exercise any supervision, direct or indirect, over Mr. Steward."

I accept the foregoing representations, and based upon them I approve the recommended settlement.

Accordingly, the motion to approve settlement for this violation is GRANTED and the operator is ORDERED TO PAY \$800 within 30 days from the date of this decision.

In the prior partial settlement approval, I approved settlements for the two other violations involved in this case. If it has not already done so, the operator is ORDERED TO PAY \$300 for these violations within 30 days from the date of this decision.

Paul Merlin  
Chief Administrative Law Judge

Distribution:

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