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SOL (MSHA) V. WILMOT 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 PROCEEDINGS

Docket No. LAKE 85-47  
A.C. No. 33-02929-03505

v.

North Mine

WILMOT MINING COMPANY,  
RESPONDENT

DECISION

Appearances: Patrick M. Zohn, Esq., Office of the Solicitor,  
U.S. Department of Labor, Cleveland OH, for  
Petitioner;

Thomas G. Eddy, Esq., Eddy & Osterman, Pittsburgh, PA,  
for Respondent.

Before: Judge Fauver

On May 17, 1988, the United States Court of Appeals for the Sixth Circuit reversed the assessment of a civil penalty of \$2,000 for a violation of 30 C.F.R. 77.403a(a) and remanded the case to the Commission for reconsideration of the penalty. The Commission remanded the matter to me on June 20, 1988.

On July 5, 1988, the Court recalled its mandate pending the company's decision whether to file a petition for a writ of certiorari with the Supreme Court of the United States.

On January 25, 1989, the Court, through its Deputy Clerk, advised the Commission that no application has been made for writ of certiorari.

The matter is now before me on remand by the Commission for reconsideration of the penalty of \$2,000.

In my original decision, I found gross negligence by the company and imputed gross negligence of the deceased foreman, John D. Schrock, to the company. Since the court has reversed both findings, I will reassess the civil penalty assuming that the ROPS violation did not involve negligence by the company.

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Considering all the criteria for a civil penalty under 110 (i) of the Act, I find that a civil penalty of \$200 is appropriate for this violation.

ORDER

Respondent shall pay a civil penalty of \$200 within 30 days of this Decision.

William Fauver  
Administrative Law Judges