

CCASE:
SOL (MSHA) V. HELEN MINING
DDATE:
19890817
TTEXT:

~1526

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. PENN 88-312
A.C. No. 36-00926-03753

v.

Homer City Mine

HELEN MINING COMPANY
RESPONDENT

DECISION

Appearances: Judith L. Horowitz, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia,
Pennsylvania, for Petitioner;
Ronald B. Johnson, Esq., Volk, Franovitch,
Anetakis, Recht Robinson & Hellersted, Wheeling,
West Virginia, for Respondent.

Before: Judge Maurer

This case is before me upon a petition for assessment of
civil penalty under Section 105(d) of the Federal Mine Safety and
Health Act of 1977, 30 U.S.C. 801, et seq, (the Act).

Pursuant to notice, a hearing was commenced in Pittsburgh,
Pennsylvania on June 27, 1989. At that hearing, prior to the
taking of any testimony, the parties proposed a settlement
agreement. The petitioner proposed reducing the specially
assessed penalty for Order No. 2888642 from \$600 to \$300 based on
reducing the negligence factor from "high" to "moderate" and
therefore modifying the section 104(d)(2) order to a citation
issued under section 104(a) of the Act. I approved that motion on
the record at the hearing.

I have considered this matter in that light and under the
criteria for civil penalties contained in section 110(i) of the
Act and I conclude that the proffered settlement is appropriate
under the circumstances.

Pursuant to the Rules of Practice before this Commission,
this written decision confirms the bench decision I rendered at
the hearing, approving the settlement.

~1527

Since the respondent already paid the \$600 civil penalty originally assessed by mistake, and only \$300 is actually owed, respondent should be given a \$300 credit by MSHA, and upon such credit, this proceeding IS DISMISSED.

Roy J. Maurer
Administrative Law Judge