

CCASE:  
MSHA V. JIM WALTER RESOURCES  
DDATE:  
19890905  
TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
September 5, 1989

SECRETARY OF LABOR, CIVIL PENALTY PROCEEDINGS  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA), Docket No. SE 89-82  
Petitioner A. C. No. 01-01401-03745  
v. No. 7 Mine

JIM WALTER RESOURCES, INC.,  
Respondent Docket No. SE 89-99  
A. C. No. 01-01322-03735  
No. 5 Mine

Docket No. SE 89-101  
A. C. No. 01-00758-03737  
No. 3 Mine

JIM WALTER RESOURCES, INC., CONTEST PROCEEDING  
Contestant Docket No. SE 89-45-R  
v. Citation No. 3188139; 12/20/88

SECRETARY OF LABOR, No. 5 Mine  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA), Mine ID 01-01322  
Respondent

DECISION

Appearances: William Lawson, Esq., Office of the Solicitor,  
U.S. Department of Labor, Birmingham, Alabama,  
for Petitioner; Robert Stanley Morrow, Esq., Jim  
Walter Resources Inc., Birmingham, Alabama, for  
Respondent/Contestant.

Before: Judge Merlin

When the above-captioned cases came on for hearing counsel for both parties advised that settlements had been reached. With the permission of the bench these settlements were placed upon the record. Other cases scheduled for hearing at the same time were heard on the merits.

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Citation No. 3012311 was issued for a violation of 30 C.F.R. 75.203(b) because the projected direction of mining was not being followed. The painted mark on the mine roof showing the center of the entry was not being used resulting in some off-site cuts. The original assessment was \$311 and the proposed settlement was for this amount. According to advice received at the hearing the violation was serious and the operator was negligent. On this basis the proposed settlement was approved.

Citation No. 3012027 was issued for a violation of 30 C.F.R. 75.1725(c) which directs that repairs and maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion. The original assessment was \$2,000 and the proposed settlement is for \$800. At the hearing the Solicitor advised that the longwall coordinator stepped inside a stage loader while bolts on the conveyor chain were being tightened by a laborer. In addition, the longwall coordinator failed in his responsibility to lock out the conveyor chain while it was being repaired. Since the lock out device was not operative, the laborer started the conveyor chain. As a result the longwall coordinator was caught by the chain and injured. At the hearing the Solicitor described the circumstances in detail. In particular, he advised that the longwall coordinator was fully trained and that his conduct in this instance was unpredictable and aberrational. Accordingly, the degree of negligence attributable to the operator was far less than originally thought. The recommended settlement was approved from the bench.

Order No. 3188139 was issued for violation of 30 C.F.R. 75.202(a) because the operator failed adequately to support a rib. As a result a miner was injured from a rib roll. The original assessment was for \$2,500 and the proposed settlement is for that amount. Clearly, this violation was very serious and the operator was negligent. I approved the recommended settlement because it is a substantial amount suitable for the degree of gravity and negligence involved. In addition, I note that the subject order which was issued under section 104(d)(1) with its attendant sanctions, remains in effect. The operator's notice of contest with respect to the subject order is dismissed.

ORDER

Accordingly, it is ORDERED that the operator's notice of contest in Docket No. SE 89-45-R is DISMISSED.

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It is further ORDERED that the recommended settlements be APPROVED and the operator is ORDERED TO PAY the following amounts within 30 days from the date of this decision:

Docket No.	Citation No.	Amount
SE 89-82	3012311	\$ 311
SE 89-99	3188139	\$2,500
SE 89-101	3012027	\$ 800
Total		\$3,611

Paul Merlin  
Chief Administrative Law Judge

Distribution:

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