

CCASE:
MSHA V. A. H. SMITH STONE
DDATE:
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TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
September 21, 1989

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner

v.

A. H. SMITH STONE COMPANY,
Respondent

CIVIL PENALTY PROCEEDINGS

Docket No. VA 88-44-M
A. C. No. 44-03995-05509

Culpepper Plant

Docket No. YORK 89-24-M
A. C. No. 18-00275-05517

Branchville Plant

Docket No. YORK 89-35-M
A. C. No. 18-00481-05507

Brandywine Mine

Docket No. YORK 89-36-M
A. C. No. 18-00293-05504

Clinton Mine

Docket No. YORK 89-40-M
A. C. No. 18-00275-05520

Docket No. YORK 89-43-M
A. C. No. 18-00275-05518

Docket No. YORK 89-44-M
A. C. No. 18-00275-05519

Branchville Plant

DECISION

Appearances: Jack F. Strausman, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia, for
Petitioner; Lisa M. Wolff, A.H. Smith Stone
Company,

for Respondent

Before: Judge Merlin

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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.

VA 88-44-M

This case involves four violations which were originally assessed at \$362 and the operator agreed to pay the original assessments in full. The circumstances of these violations were explained on the record and I accepted the proffered amounts from the bench.

YORK 89-24-M

This case involves twenty violations which were originally assessed at \$1,499. The proposed settlement is for \$1,460.

Citation No. 3247135 was issued for a violation of 30 C.F.R. 56.14107(a) because the guard for the secondary crusher was inadequate the penalty was originally assessed at \$79 and the proposed settlement is for \$40. The Solicitor represents that the penalty reduction is warranted because gravity is less than originally thought. The Solicitor advises that a guard had been in place which had a small opening ten inches above the floor as originally designed and installed. Due to the closeness of the opening to the floor and to the size of the opening, the probability of injury was less than originally thought. The foregoing representations were accepted from the bench and the proposed settlement was approved.

The operator agreed to pay the original assessments for the remaining nineteen violations involved in this case. The circumstances of these violations were explained on the record and I accepted the proffered amounts from the bench.

YORK 89-35-M

This case involves two violations which were originally assessed at \$170. The proposed settlement is for \$124.

Citation No. 3247111 was issued for a violation of 30 C.F.R. 56.12036 because fuse tongs were not available for removing and replacing electrical fuses. The penalty was originally assessed at \$79 and the proposed settlement is for \$60. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. This condition had not been cited in previous inspections and the violation was abated in good faith. The foregoing representations

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were accepted from the bench and the proposed settlement was approved.

Citation No. 3247113 was issued for a violation of 30 C.F.R.

56.20001 because the inspector found evidence that alcohol was been consumed on mine property. The penalty was originally assessed at \$91 and the proposed settlement is for \$64. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. The Secretary has agreed to adjust the assessment of negligence from moderate to low due to representations by the operator that there have not been problems with employees drinking on the property previous to the time this bottle was discovered. Also there was no other evidence known to the operator of alcohol-related problems. The foregoing representations were accepted from the bench and the proposed settlement was approved.

YORK 89-36-M

This case involves six violations which were originally assessed at \$399. The proposed settlement is for \$289.

Citation No. 3246014 was issued for a violation of 30 C.F.R.

56.14112(b) because the V-belt drive on the gravel shaker screen wa not adequately guarded. The penalty was originally assessed at \$63 and the proposed settlement is for \$44. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. The guard was present, but, it did not extend the entire distance. The foregoing representations were accepted from the bench and the proposed settlement was approved.

Citation No. 3247104 was issued for a violation of 30 C.F.R.

56.14132(a) because the automatic reverse back-up alarm on a loader was inoperative. The penalty was originally assessed at \$79 and the proposed settlement is for \$65. The Solicitor represents that the penalty reduction is warranted because gravity is less than originally thought. Because the loader would not be moving fast, the seriousness of any injury was slightly less. The foregoing representations were accepted from the bench and the proposed settlement was approved.

Citation No. 3247106 was issued for a violation of 30 C.F.R.

56.14103(c)(2) because a window on the left side of a loader had been removed and a piece of solid metal had been used to replace it. The penalty was originally assessed at \$79 and the proposed settlement is for \$50. The Solicitor represents that the penalty reduction is warranted because gravity is less than originally thought. The loader was not moving fast. The foregoing representations were accepted from the bench and the proposed settlement was approved.

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Citation No. 3247108 was issued for a violation of 30 C.F.R. 56.12036 because fuse tongs were not available for removal and replacement of fuses. The penalty was originally assessed at \$79 and the proposed settlement is for \$50. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. This condition had not been cited in previous inspections. The foregoing representations were accepted from the bench and the proposed settlement was approved.

Citation No. 3247110 was issued for a violation of 30 C.F.R. 56.12016 because an employee was standing on a conveyor belt that had not been locked out to keep it from being inadvertently energized. Locks for locking out the equipment were not available. The penalty was originally assessed at \$79 and the proposed settlement is for \$50. The Solicitor represents that the penalty reduction is warranted because gravity is less than originally thought. The employee was at the low end of the belt which was not very high off the ground. The foregoing representations were accepted from the bench and the proposed settlement was approved.

The operator agreed to pay the original assessment for the remaining violation involved in this case. The circumstances of the violation were explained on the record and I accepted the proffered amount from the bench.

YORK 89-40-M

This case involves two violations which were originally assessed at \$1,700. The proposed settlement is for \$950.

Citation No. 3246302 was issued for a violation of 30 C.F.R. 56.14001 because a conveyor belt was not provided with a guard on the tail pulley. An employee was observed working in the area and exposed to the hazard. The penalty was originally assessed at \$500 and the proposed settlement is for \$250. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. The Solicitor accepted the operator's representation that the guard had been removed for cleaning and had not been immediately replaced. The foregoing representations were accepted from the bench and the proposed settlement was approved.

Order No. 3247101 was issued for a violation of 30 C.F.R. 56.18006 because new workers had not been indoctrinated in the safety rules and in safe work procedures. This information was given to the inspector both from supervisors and from an interpreter who interpreted for Hispanic employees. The penalty was originally assessed at \$1,200 and the proposed settlement is for \$700. The Solicitor

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represents that the penalty reduction is warranted because gravity is less than originally thought. Only 5 employees, instead of 9 as originally determined by the inspector, were affected. The foregoing representations were accepted from the bench and the proposed settlement which is a substantial amount was approved.

YORK 89-43-M

This case involves twenty violations which were originally assessed at \$2,897. The proposed settlement is for \$2,102.

The Solicitor has advised that Citation Nos. 3246731, 3246736, 3247100, and 3247138 which were originally assessed at \$157, \$119, \$400, \$119 respectively were, vacated by MSHA on August 10, 1989, as being issued in error.

The operator has agreed to pay the original assessments for the sixteen remaining violations involved in this case. The circumstances of these violations were explained on the record and I accepted the proffered amounts from the bench.

YORK 89-44-M

This case involves one violation which was originally assessed ar \$20 and the operator has agreed to pay the original assessment in full. The circumstances of this violation were explained on the record and I accepted the proffered amount from the bench.

ORDER

In light of the foregoing the recommended settlements are APPROVED and the operator is ORDERED TO PAY the following amounts within 30 days from the date of this decision.

VA 88-44-M

Citation No.	Amount
2851999	\$ 79
2852000	\$ 79
2852603	\$ 85
2852604	\$ 119
Total	\$ 362

YORK 89-24-M

3246407	\$ 20
3246303	\$ 147
3246729	\$ 20
3246730	\$ 20

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3246826	\$	105
3246827	\$	105
3246831	\$	20
3247082	\$	79
3247083	\$	79
3247084	\$	20
3247085	\$	20
3247088	\$	79
3247134	\$	157
3247135	\$	40
3247136	\$	79
3247137	\$	20
3247140	\$	20
3246830	\$	105
3247095	\$	147
3247096	\$	178
	Total	\$1,460

YORK 89-35-M

3247111	\$	60
3247113	\$	64
	Total	124

YORK 89-36-M

3246014	\$	44
3247104	\$	65
3247106	\$	50
3247107	\$	20
3247108	\$	60
3247110	\$	50
	Total	\$ 289

YORK 89-40-M

3246302	\$	250
3247101	\$	700
	Total	\$ 950

YORK 89-43-M

3246727	\$	20
3246728	\$	20
3246731	VACATED	
3246732	\$	20
3246733	\$	119
3246734	\$	178
3246735	\$	136
3246736	VACATED	
3246739	\$	119
3246740	\$	119

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3246824	\$	420
3246828	\$	157
3247081	\$	119
3247086	\$	119
3247087	\$	119
3247090	\$	225
3247100		VACATED
3247138		VACATED
3247139	\$	192
3246829	\$	20
	Total	\$2,102

YORK 89-44-M

3247099	\$	20
	Grand Total	\$5,307

Paul Merlin
Chief Administrative Law Judge

Distribution:

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