

CCASE:
MSHA V. CONSOLIDATION COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
September 26, 1989

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

v.

CONSOLIDATION COAL COMPANY,
Respondent

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 89-96
A. C. No. 46-01453-03841

Humphrey No. 7 Mine

Docket No. WEVA 89-159
A. C. No. 46-01968-03800

Blacksville No. 2 Mine

Docket No. WEVA 89-162
A. C. No. 46-01318-03872

Docket No. WEVA 89-170
A. C. No. 46-01318-03873

Docket No. WEVA 89-171
A. C. No. 46-01318 03877

Robinson Run No. 95 Mine

Docket No. WEVA 89-183
A. C. No. 46-01453-03848

Humphrey No. 7 Mine

DECISION

Appearances: Ronald Gurka, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for

Consolidation Petitioner; Michael R. Peelish, Esq.,
Coal Company, Pittsburgh, Pennsylvania for Respondent.

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.

This case involves eight violations which were originally assessed at \$6,650. The proposed settlement is for \$5,800.

Order No. 3106712 was issued for a violation of 30 C.F.R. 75.208 because a visible warning sign or a physical barrier was not installed to impede travel beyond permanent roof supports in the face areas of a section. The penalty was originally assessed at \$850 and the proposed settlement is for \$700. The Solicitor represents that the penalty reduction is warranted because negligence is somewhat less than originally thought. The parties agree that there was a dispute about how this standard was to be interpreted. The foregoing representations were accepted from the bench and the proposed settlement was approved.

Order No. 3113111 was issued for a violation of 30 C.F.R. 75.400 because loose coal, coal dust and float coal float were permitted to accumulate in twelve different locations in the intake air escapeway. The penalty was originally assessed at \$850 and the proposed settlement is for \$650. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. Although there had been an inspection, there was not conclusive proof that the operator knew the extent of this condition immediately prior to the order being issued. The foregoing representations were accepted from the bench and the proposed settlement was approved.

Order Nos. 3113118 and 3113119 were issued for violations of 30 C.F.R. 75.1403-9(c) because shelter holes were not being maintained free of obstructions. The penalties were originally assessed at \$750 each and the proposed settlement for each is \$500. The Solicitor represents that the penalty reductions are warranted because gravity is less than originally thought. Only one miner would be affected and the hole probably could protect him. Also the track was straight so there would be increased warning. The foregoing representations were accepted from the bench and the proposed settlements were approved.

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

This case involves one violation which was originally assessed at \$850 and the operator has agreed to pay the original assessment in full. The circumstances of this violation

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were explained on the record and I accepted the proffered amount from the bench.

WEVA 89-162

This case involves two violations which were originally assessed at \$2,100. The proposed settlement is for \$1,850.

Order No. 2943933 was issued for a violation of 30 C.F.R. 75.400 because combustible material was permitted to accumulate at a belt starter box. The penalty was originally assessed at \$1,000 and the proposed settlement is for \$750. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. This condition existed for only a short time before the order was issued. The foregoing representations were accepted from the bench and the proposed settlement was approved.

The operator has agreed to pay the original assessment of the \$1,100 for the other violation involved in this case. The circumstances of the violation were explained on the record and I accepted the proffered amount from the bench.

WEVA 89-170

This case involves two violations which were originally assessed at \$1,900. The proposed settlement is for \$1,300.

Order No. 3119763 was issued for a violation of 30 C.F.R. 75.303 because an inadequate preshift examination was performed on a bleeder section construction area. The penalty was originally assessed at \$900 and the proposed settlement is for \$700. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. The company was uncertain whether a preshift examination was required because this was a construction area. The foregoing representations were accepted from the bench and the proposed settlement was approved.

Order No. 3119498 was issued for a violation of 30 C.F.P. 75.400 because combustible material was allowed to accumulate on a longwall section. The penalty was originally assessed at \$1,000 and the proposed settlement is for \$600. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. This condition existed for only a short rime before the order was issued. The foregoing representations were accepted from the bench and the proposed settlement was approved.

WEVA 89-171

This case involves one violation which was originally assessed at \$1,100. The proposed settlement is for \$700.

Order No. 2944262 was issued for a violation of 30 C.F.R. 75.400 because combustible material was allowed to accumulate in a section. The Solicitor represents that the penalty reduction is warranted because negligence is less than originally thought. There is some dispute, depending on where samples were taken, as to whether the area was adequately rock dusted. The foregoing representations were accepted from the bench and the proposed settlement was approved.

WEVA 89-183

This case involves one violation which was originally assessed at \$206 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.

WEVA 89-96

Citation No.	Amount
3106712	\$ 700
3113111	\$ 650
3113114	\$1,000
3113115	\$ 850
3113116	\$ 750
3113117	\$ 850
3113118	\$ 500
3113119	\$ 500
Total	\$5,800

WEVA 89-159

3100883	\$ 850
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WEVA 89-162

2944067	\$1,100
2943933	\$ 750
Total	\$1,850

WEVA 89-170

3119763	\$ 700
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3119498		\$ 600
	Total	\$1,300
	WEVA 89-171	
2944262		\$ 700
	WEVA 89-183	
2943993		\$ 206
	Grand total	\$10,706

Paul Merlin
Chief Administrative Law Judge

Distribution:

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