

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

November 29, 1989

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. YORK 89-45-M
Petitioner : A. C. No. 30-00006-05527
 :
v. : Blue Circle Atlantic
 :
BLUE CIRCLE ATLANTIC, INC., :
Respondent :

ORDER ACCEPTING SETTLEMENT MOTION
DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

This case is before me pursuant to the Commission's order dated November 20, 1989, to determine whether good cause exists to now accept the late filed settlement motion.

In his motion to reopen filed November 14, 1989, operator's counsel advises that he and the Solicitor had been engaged in extensive settlement negotiations regarding this case. He also states that from November 3 to November 11 he had been engaged in litigation matters outside his office and away from Chicago and therefore did not become aware of the default order until November 11, 1989. In a telephone conference call on November 13, 1989, operator's counsel and the Solicitor previously advised me of the foregoing circumstances and I told them that under the present state of Commission regulations I was without jurisdiction to determine whether relief from the default was warranted until the Commission treated the request for relief as an appeal and remanded the matter back to me. This has now occurred. In view of the ongoing settlement negotiations and the absence of operator's counsel from his office and city on other professional matters, I conclude that relief is warranted and that the filing of the settlement motion should be accepted.

The subject citation was issued for a violation of 30 C.F.R. § 56.9003 because a haulage truck was not provided with adequate brakes. The penalty was originally assessed at \$900 and the proposed settlement is for \$600. The settlement motion represents that negligence is less than originally thought because the truck in issue had been inspected shortly before citation was

issued. In light of this circumstance and because the proposed settlement remains a substantial amount, I conclude it should be approved.

In light of the foregoing, it is ORDERED that late filing of the settlement be APPROVED.

It is further ORDERED that the motion for settlement be APPROVED.

It is further ORDERED that the operator PAY \$600 within 30 days from the date of this decision.


Paul Merlin
Chief Administrative Law Judge

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