

CCASE:
SOL (MSHA) V. TUNNELTON MINING
DDATE:
19891211
TTEXT:

~2524

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 PROCEEDINGS

Docket No. PENN 89-108
A.C. No. 36-00929-03650

v.

Docket No. PENN 89-109
A.C. No. 36-00929-03652

TUNNELTON MINING COMPANY,
RESPONDENT

Docket No. PENN 89-131
A.C. No. 36-00929-03654

Marion Mine

DECISIONS

Appearances: Mark V. Swirsky, Esq., Office of the Solicitor,
U.S. Department of labor, Philadelphia,
Pennsylvania, for the Petitioner;
Joseph A. Yuhas, Esq., Tunnelton Mining Company,
Ebensburg, Pennsylvania, for the Respondent.

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments for seven alleged violations of certain mandatory safety standards found in Part 75, Title 30, Code of Federal Regulations. The respondent filed timely answers denying the violations, and the cases were heard in Indiana, Pennsylvania, with several other docketed cases during the hearing term October 31, and November 1, 1989.

Issues

The issues presented in these proceedings are (1) whether the conditions or practices cited by the inspector constitute violations of the cited mandatory safety standards, (2) the appropriate civil penalties to be assessed for the violations,

~2525

taking into account the statutory civil penalty criteria found in section 110(i) of the Act; and (3) whether the violations were "significant and substantial."

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 301, et seq
2. Commission Rules, 29 C.F.R. 2700.1, et seq.

Stipulations

The parties presented stipulations in Docket No. PENN 89-109, and they agreed that these stipulations were equally applicable to all of the cases. The matters stipulated to are as follows:

1. Tunnelton Mining Company is a subsidiary of Pennsylvania Mines Corporation.
2. Tunnelton Mining Company is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.
3. The Administrative Law Judge has jurisdiction in these proceedings.
4. The subject citations were properly served by a duly authorized representative of the Secretary of Labor upon an agent of the respondent at the dates, times, and places stated therein, and may be admitted into evidence for the purpose of establishing their issuance, and not for the truthfulness or relevancy of any statements asserted therein.
5. The respondent demonstrated good faith in the abatement of the citations.
6. The assessment of civil penalties in these proceedings will not affect respondent's ability to continue in business.
7. The appropriateness of the penalties, if any, to the size of the respondent's business should be based on the fact that:
 - a. The Pennsylvania Mines Corporation annual production tonnage is 1,435,690;

b. The Tunnelton Mining Company's annual production tonnage is 733,668.

8. The respondent Tunnelton Mining Company was assessed 294 violations over 539 inspection days during the 24 months preceding the issuance of the subject citations.

9. The parties stipulate to the authenticity of their exhibits, but not to their relevance, nor to the truth of the matters asserted therein.

Discussion

All of the contested citations in issue in these proceedings are section 104(a) citations, with "S&S" findings. During opening statements at the hearings, the parties confirmed that they agreed to settle all of the violations, and they presented arguments on the record in support of their proposed settlement disposition of the cases, including arguments in support of the civil penalty reductions for three of the citations. The respondent agreed to make full payment of the proposed civil penalty assessments for the remaining four citations.

With regard to Citation No. 2888721 (Docket No. PENN 89-109), the parties agreed that an injury was unlikely, and petitioner's counsel agreed to modify the gravity finding to non-S&S. In Docket No. PENN 89-108, the parties agreed that the cited battery charger in question was enclosed in a designated battery charging station, thereby reducing the likelihood of any hazard (Citation No. 2888733). With regard to Citation No. 2888734, concerning an inoperable warning device, the parties agreed that the cited machine was an inherently loud and slowmoving vehicle, thereby mitigating any potential hazard that it could not be heard or seen. In both instances, the inspector made "low negligence" findings, and the citations were abated within 10 and 25 minutes (Tr. 5-15).

Findings and Conclusions

After careful consideration of the pleadings and arguments made by the parties in support of the proposed settlement of the violations in question, including a review of all of the conditions and practices cited, and the civil penalty criteria found in section 110(i) of the Act, the proposed settlement dispositions were approved from the bench, and my decisions in this regard are herein reaffirmed. The violations, proposed civil penalty assessments, and the settlement amounts are as follows:

~2527

Docket No. PENN 89-108

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
2888733	01/04/89	75.1107-1(a)(3)(ii)	\$ 91	\$ 68
2888734	01/06/89	75.1403	\$ 74	\$ 54

Docket No. PENN 89-109

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
2888866	12/06/88	75.523-2(c)	\$ 98	\$ 98
2888721	12/06/88	75.400	\$ 74	\$ 37

Docket No. PENN 89-131

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
2884557	02/08/89	75.202(a)	\$ 85	\$ 85
2884558	02/09/89	75.202(a)	\$ 85	\$ 85
2884559	02/09/89	75.202(a)	\$112	\$112

ORDER

Respondent IS ORDERED to pay civil penalties in the settlement amounts shown above in satisfaction of the citations in question within thirty (30) days of the date of these decisions and order, and upon receipt of payment by the petitioner, these proceedings are dismissed.

George A. Koutras
Administrative Law Judge