

CCASE:
SOL (MSHA) V. FRANCE STONE
DDATE:
19900605
TTEXT:

~1207

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 PROCEEDING

Docket No. LAKE 89-92-M
A.C. No. 20-00024-05514

v.

Monroe Stone Quarry

FRANCE STONE COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Broderick

Following remand of this case to me by the Review Commission, the parties on May 29, 1990, filed a Joint Motion to Amend Settlement, Approve Amended Settlement and Dismiss.

The two violations charged in this proceeding were originally assessed at \$2000 and \$10,000. The motion states that the parties agree to settle for the amounts originally assessed.

Citation 3265648, charging a violation of 30 C.F.R. 56.14131 because of the failure of the operator of a haul truck to wear seat belts, was assessed at \$2000. The parties agree that Respondent demonstrated a low degree of negligence in that it would have been extremely difficult for Respondent to know that the operator was not wearing seat belts. The violation was significant and substantial.

Citation 3265649, charging a violation of 30 C.F.R. 56.9301 because a berm or bumper block to prevent overtravel was not provided at the top edge of a dumping location, was assessed at \$10,000. The parties agree to amend the 104(d)(1) citation to a 104(a) citation and to reduce the negligence from high to moderate because, while Respondent had established a rule and practice of not permitting haul trucks to dump in areas above loading operations, it was not followed in this case. A fatality occurred when a haul truck backed over the edge of a stock pile ramp. The parties agree that the violation is significant and substantial in that dumping above a loading area creates a reasonable probability of a reasonably serious injury or death. The parties agree that Respondent asserts and the evidence shows that employees unsuccessfully tried to warn the truck driver

~1208

prior to the accident that he was about to dump at a hazardous place on the stockpile.

The parties further agree that except for these proceedings, and any other subsequent MSHA proceedings between the parties, none of the foregoing agreements, statements, findings, and actions taken by Respondent shall be deemed an admission by the Respondent of allegations contained within the citations. The agreement, statements, for the purpose of compromising and settling this matter economically and amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.

I have considered the motion in the light of the criteria in section 110(i) of the Act and conclude that it should be approved.

Accordingly, the Motion to Amend Settlement and Approve Amended Settlement is GRANTED. The Amended Settlement is APPROVED and Respondent is ORDERED to pay the sum of \$12,000 within 30 days of the date of this order.

James A. Broderick
Administrative Law Judge