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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. KENT 90-6  
A.C. No. 15-11529-03524

v.

H-8 Mine

INFERNO COALS INCORPORATED,  
RESPONDENT

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee,  
for Petitioner;  
Charles J. Baird, Esq., Baird and Baird, P.S.C.,  
Pikeville, Kentucky for Respondent.

Before: Judge Melick

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," charging Inferno Coals Incorporated (Inferno) with 20 violations of mandatory standards and proposing civil penalties of \$2,829 for the alleged violations. The general issue before me is whether Inferno violated the cited regulatory standards and, if so, the appropriate civil penalty to be assessed in accordance with Section 110(i) of the Act.

Respondent failed to appear at the scheduled hearings but filed pleadings captioned "Motion to Withdraw Notice of Contest" with respect to 19 of the 20 citations at bar. At the hearings Petitioner presented testimony and documentation adequate to support its proposed penalties for these 19 violations within the framework set forth in Section 110(i) of the Act. Respondent's "Motion to Withdraw Notice of Contest" is deemed to be a motion for approval of settlement and in light of the evidence presented it is granted. An order will therefore be incorporated as part of this decision directing that Respondent pay the penalties proposed for the subject 19 violations.

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Respondent also filed a "Joint Stipulation of Facts" regarding the remaining citation, No. 2784600. As amended at hearing the proposed stipulations were accepted by the Secretary. At hearings the Secretary also presented testimonial and documentary evidence in support of her claim that a factual basis existed to sustain the allegations in Citation No. 2784600 and that a violation did in fact occur. See Co-op Mining Co., 2 FMSHRC 3475 (1980). The Secretary also produced evidence in support of her proposed penalty of \$600 for that violation.

According to supervisory MSHA Inspector John South, Inferno was previously cited on January 5, 1989, for a violation of the same mandatory standard cited at bar (i.e. 30 C.F.R. 48.10) after Inferno had failed to pay 14 miners for the required safety training (See Exhibit G-22). During his investigation of events leading to that citation Inspector South was told by one of Inferno's owners, James Salyers, that in his 11 years in the coal mining business he had never paid any of his employees for the MSHA required safety training. However, according to Inspector South, Mine Superintendent Jackie Bartley told him that he (Bartley) had been aware of the necessity to pay miners for such safety training and had previously told Salyers of this requirement.

According to Inspector South, Inferno abated the January 5 citation by compensating the 14 miners for their lost pay, but thereafter withheld from the "bonus pay" of 9 of these 14 miners plus 5 additional miners who had attended annual refresher training on subsequent dates, amounts equal to the compensation they were paid for the training. Accordingly on July 28, 1989, Citation No. 2784600 was issued by Inspector South. That Citation reads as follows:

Harry Mullins, Michael Fleming, Ronald Ratliff, Ronald England, James E. Charles, Russell Ratliff, John H. Allen, Donald Saunders, and Bennett Justice attended Annual Refresher Training on December 3, 1988, and received compensation for the subject training hours.

Larry Coleman, Frank J. Stanley, Alfred Adkins and Randy Hill attended Annual Refresher Training on December 17, 1988, and received compensation for the subject training hours.

James Billiter attended Annual Refresher training on December 31, 1988, and received compensation for the subject training hours.

The compensation received for the subject training was withheld in the same amount from the above listed employee's bonus pay received by the subject employees on June 30, 1989.

The cited standard, 30 C.F.R. 48.10, provides as follows:

(a) training shall be conducted during normal working hours; miners attending such training shall receive the rate of pay as provided in Section 48.2(d) (definition of normal working hours of this sub-part A).

(b) if such training shall be given at a location other than the normal place of work, miners shall be compensated for the additional cost, such as mileage, meals and lodging, they may incur in attending such training sessions.

Inferno apparently argues that because the issuance of a "bonus" to miners was voluntary on its part and above and beyond any required payment to its employees, it had the right to withhold payment of this "bonus" to those miners taking the MSHA mandated annual refresher training in the precise amount of the compensation paid to the miners attending such training. However, since it is not disputed that the subject miners would have received the full "bonus" but for their attendance at the legally mandated annual refresher training it is clear that Inferno violated the standard at 30 C.F.R. 48.10 as alleged.

Since Inferno management clearly knew, following its initial abatement of the January 5, 1989, citation, of the regulatory requirement to compensate miners for their required safety training, its subsequent attempt to recoup that compensation from those miners through a transparent accounting subterfuge, Inferno is chargeable with an intentional violation--or, within the framework of the criteria under section 110(i), the highest negligence. In addition, since Inferno continued to refuse to compensate the subject miners on the basis of this transparent subterfuge until a section 104(b) "failure to abate" withdrawal order was issued, it clearly did not abate the violation in good faith. The violation was also serious in that the repeated failure to compensate miners for their required safety training would clearly tend to discourage participation in that important training.

Under the circumstances, and considering all the criteria under Section 110(i) of the Act, I find that a civil penalty of

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\$600 is indeed appropriate for the violation charged in Citation No. 2784600.

ORDER

Inferno Coals Incorporated is hereby directed to pay the proposed civil penalties of \$2,829 in full within 30 days of the date of this decision.

Gary Melick  
Administrative Law Judge