

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

October 10, 1990

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 90-42
Petitioner	:	A. C. No. 36-00823-03725
	:	
v.	:	Jane Mine
	:	
KEYSTONE COAL MINING	:	
CORPORATION,	:	
	:	
Respondent	:	

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

The Solicitor has filed a motion to approve a **settlement** for the one violation involved in this case. The originally assessed penalty was \$1,200 and the proposed settlement is \$800. The Solicitor discusses the violation in light of the six **statutory** criteria set forth in section **110(i)** of the Federal Mine **Safety** and Health Act of 1977.

Citation No. 3300116 was issued as a 104(d)(1) citation for a violation of 30 C.F.R. § 75.400 because float coal dust was permitted to accumulate on rock dusted surfaces in the immediate return. The Solicitor represents that the reduction is warranted because negligence is not as high as originally thought. Based upon the **Solicitor's** representations, I believe that gravity also is somewhat less than had been thought. The Solicitor states that the operator properly conducted **onshift** examinations of the areas and believed that it was not necessary to **rockdust** the area again. Further, the operator believed that the area was slightly gray in color and noted that several parts of the area were damp or wet. so too, the inspector conceded that parts of the area were wet. According to the Solicitor, it is uncertain how long the condition exist&d. Finally, no accumulations were noted in the preshift books nor were any citations issued for failure to record the condition.

The Solicitor states that because of the foregoing circumstances, the citation has been modified to a 104(a) citation. This action is clearly correct since the operator's conduct did not rise to the level of unwarrantable failure as that term has been defined by the Commission. In my opinion, the dampness

which contributed to a lessening of the negligence factor also mitigates gravity. Nevertheless, I agree with the Solicitor that the violation was serious because there remained a risk of explosion or fire.

Based upon the foregoing, I find that the recommended settlement is appropriate.

Accordingly, it is ORDERED that the proposed settlement be APPROVED and the operator PAY \$800 within 30 days of the date of this decision.



Paul Merlin
Chief Administrative Law Judge

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