

CCASE:  
SOL (MSHA) v. BENTLEY COAL  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
520 Leesburg Pike  
Falls Church, Virginia 22041

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. WEVA 91-5  
A.C. No. 46-07204-03514

v.

Flatbush No. 1 Mine

BENTLEY COAL COMPANY,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Maurer

On January 30, 1991, the Secretary of Labor, on behalf of the parties to this action, filed a motion to approve the settlement negotiated between them. At issue in this case are three citations, originally assessed at \$10,500 in the aggregate. Settlement is proposed at \$8,750.

Citation No. 3110495 was issued for a violation of 30 C.F.R. 77.1605(1) on November 14, 1989. A fatal accident had occurred on November 9, 1989, when a rock truck backed off an elevated roadway and fell fifty (50) feet into a water-filled pit. Immediately before the accident occurred, the driver had been attempting to dump a load of overburden at a location where none of the protective measures described in the cited mandatory standard had been provided. The Solicitor represents that the operator's negligence was moderate and the gravity very serious. The Secretary proposed a penalty of \$5,000 for this violation and the respondent has agreed to pay this amount in full.

Citation No. 3110496 was issued for a violation of 30 C.F.R. 77.1605(k), which requires berms or guards to be provided on the outer banks of elevated roadways. It was originally thought that this violation also contributed to the fatal accident herein before described, but it now appears to the Secretary that the failure to have berms or guards along the roadway did not contribute to the accident. Nevertheless, the Solicitor again represents that the operator's negligence was moderate and the violation serious. The Secretary originally proposed a penalty of \$4000 for this violation, but the parties now wish to settle for the payment of \$2,750.

Citation No. 3110497 was issued for a violation of 30 C.F.R. 77.1713 which relates to an inadequate preshift/onshift

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examination for the hazardous conditions alluded to above. The Solicitor asserts that the mine operator's negligence was again moderate and the gravity serious. The parties seek a reduction in the proposed penalty from \$1500 to \$1000.

In support of the proposed settlement, the Solicitor states that the parties have discussed the alleged violations and the six statutory criteria stated in section 110(i) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(i), and that the circumstances presented warrant the reduction in the original civil penalty assessments for the violations in question. Further, he has submitted a detailed discussion and disclosure as to the facts and circumstances surrounding the issuance of the citations as well as a full explanation and justification for the proposed reductions.

I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, the hearing scheduled for Wednesday, February 20, 1991, in Elkins, West Virginia, is CANCELLED, the motion for approval of settlement is GRANTED, and it is ORDERED that respondent pay a penalty of \$8,750 within 30 days of this decision.

Roy J. Maurer  
Administrative Law Judge