

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

173,0 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

March 15, 1991

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 90-307
Petitioner	:	A. C. No. 46-01968-03878
	:	
v.	:	Blacksville No. 2 Mine
	:	
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT
ORDER TO MODIFY
ORDER TO PAY

Before: Judge Merlin

The Solicitor has filed a motion to approve settlement of the four violations involved in this case. The originally assessed penalty was \$924 and the proposed settlement is \$672. The Solicitor discusses the violations 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. 2708200 was issued for a violation of 30 C.F.R. § 75.316. The intake escapeway of the 12 L longwall panel did not have a constant air pressure from the intake escapeway to the track from the No. 2 block through the No. 23 block and including the area of the air lock haulage doors at No. 21 block. The proposed settlement would modify the citation to reflect that the violation was not significant and substantial. The originally assessed penalty was \$450 and the proposed settlement is \$300. The Solicitor represents that the reduction and modification are warranted because gravity was not as severe as had been first estimated.

By way of background, the Solicitor discusses the requirements of the operator's approved ventilation and dust control plan for the Blacksville No. 2 Mine. The plan requires that the operator maintain a constant air pressure from the intake escapeway to the track haulage entry on the 12L longwall panel. This provision was adopted because the operator elected to install air lock doors between the track entry and the intake escapeway entry to facilitate the movement of supplies to the working face of the section. The constant air pressure provision is intended to maintain the integrity of the intake escapeway in the event the air lock doors become damaged or open during a fire or other emergency in the track entry. In order to maintain the positive pressure differential, the operator hung a check curtain in the intake side of the longwall. Damage to the check curtain by the movement of equipment and men caused the violation.

According to the Solicitor, the violation was detected only when the air lock doors were open and that when the doors were closed the violation was not readily apparent. The Solicitor further advises that the inspector was unable to **quantify** the volume of the air passing from the track entry to the intake escapeway when the air lock doors were not in use. And it is possible that the volume was small since the violation was abated by simply tightening the check curtain on the intake side of the section. In addition, the Solicitor avers that the air lock doors were only in use two or three times a shift for relatively short periods of time and that it was not likely that a fire or other emergency would occur in the track entry during the short period of time that the doors were utilized. I accept the Solicitor's representations and based upon them find that gravity was less than originally thought. Accordingly, I approve the recommended settlement and modification of the citation.

Citation No. 3314981 was issued for a violation of 30 C.F.R. § 75.515 because the conduit to the flow control switch of the No. 2 Peerless pump, located in a crosscut two blocks down the empty track from the rotary dump, had been pulled out of the fitting leaving the insulated wires loose to rub on the metal frame. The proposed settlement would modify the citation to reflect that the violation was not significant and substantial. The originally assessed penalty was \$227 and the proposed settlement is \$125. The Solicitor represents that the reduction and modification are warranted because gravity was not as severe as originally thought. According to the Solicitor, the ground flow switch is not on the pump but rather is a permanent installation surrounded by water, and, therefore, not generally handled by miners. The Solicitor further states that the switch is protected by a separate ground fault device. I accept the Solicitor's representations and based upon them find that gravity was not as severe as originally estimated. Accordingly, I approve the recommended settlement and the citation should be modified as requested.

Citation No. 2708384 was issued for a violation of 30 C.F.R. § 45.4(b) because the management failed to maintain in writing the information required for certain trucking companies serving as independent contractors. The originally assessed penalty was \$20. Citation No. 3314695 was issued for a violation of 30 C.F.R. § 75.303(a) because an adequate preshift examination had not been performed for the morning shift on the 6 north loaded track area. The originally assessed penalty was \$227. After investigating these matters, the Solicitor believes the evidence at trial would support the fact of the violations and the inspector's evaluations of gravity and negligence. Settlements in the amount of the original assessments are sought for these citations. I accept the Solicitor's representations and approve the proposed penalties.

Accordingly, it is ORDERED that Citation Nos. 2708200 and 3314981 be MODIFIED to delete the significant and substantial designations.

It is further ORDERED that the proposed settlement be APPROVED and the operator PAY \$672 within 30 days of the date of this decision.

A handwritten signature in black ink that reads "Paul Merlin". The signature is fluid and cursive, with the first name "Paul" being larger and more prominent than the last name "Merlin".

Paul Merlin
Chief Administrative Law Judge

Distribution:

Page H. Jackson, Esq., Office of the Solicitor, U. S. Department of Labor, 4015 Wilson Boulevard, Room 516, Arlington, VA 22203 (certified Mail)

Walter J. **Scheller** III, Esq., Consolidation Coal Company, Cons01 Plaza, 1800 Washington Road, Pittsburgh, PA 15241 (Certified Mail)

Mr. Merie M. Myers, UMWA, Route 2, Box 147, Rivesville, WV 26588 (Certified Mail) .

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