

CCASE:
SOL (MSHA) v. SOUTHERN OHIO COAL
DDATE:
19910319
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

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

v.

SOUTHERN OHIO COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 90-171
A.C. No. 46-03805-03968

Martinka No. 1 Mine

PARTIAL SETTLEMENT DECISION

Before: Judge Koutras

Statement of the Case

This proceeding concerns civil penalty proposals filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments for three alleged violations of certain mandatory safety standards found in Parts 75 and 77, Title 30, Code of Federal Regulations. The respondent filed a timely contest and the case was scheduled for hearing in Morgantown, West Virginia, on March 5, 1991. However, the case was stayed on February 8, 1991, at the request of the petitioner pending a Commission decision in a related matter dealing with mandatory safety standard 30 C.F.R. 77.404(a), the standard relied on by the inspector when he issued two of the contested citations in this case.

By motion received on February 25, 1991, and filed by the petitioner pursuant to Commission Rule 30, 29 C.F.R. 2700.30, the parties seek approval of a proposed settlement of contested section 104(d)(2) "S&S" Order No. 3117257, issued on January 11, 1990, and citing an alleged violation of mandatory safety standard 30 C.F.R. 75.305. The parties assert that the proposed settlement does not involve the pending contested citations for alleged violations of section 77.404(a), and that the stay order with respect to those citations remains in effect.

Discussion

In support of the proposed settlement of Order No. 3117257, the petitioner has submitted information pertaining to the six statutory civil penalty criteria found in section 110(i) of the Act. The petitioner has also submitted a full discussion and disclosure as to the facts and circumstances surrounding the issuance of the order. The petitioner asserts that after further investigation of the factual circumstances surrounding the violation, it has agreed to modify the contested section 104(d)(2) order to a section 104(a) "S&S" citation without a finding of unwarrantability. The petitioner has also agreed that the initial proposed civil penalty assessment of \$395, should be reduced to \$200, and it concludes that the proposed settlement and payment of \$200 is reasonable and will serve to effect the intent and purposes of the Act.

Conclusion

After careful review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of the order in question, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, the motion for partial settlement filed in this case IS GRANTED, and the settlement IS APPROVED.

ORDER

The respondent IS ORDERED to pay a civil penalty assessment in the amount of \$200 in satisfaction of the modified section 104(a) "S&S" Citation No. 3117257, 30 C.F.R. 75.305. Payment is to be made to MSHA within thirty (30) days of this partial settlement decision and order, and I reserve final disposition of the matter until payment is made in compliance with this order.

With regard to the remaining two contested citations for alleged violations of 30 C.F.R. 77.404(a) (Citation Nos. 3112059 and 3112060), the previously issued Order Staying Proceeding, February 8, 1991, remains in effect pending further notice.

George A. Koutras
Administrative Law Judge