

CCASE:
SOL (MSHA) v. BILLY R. SIPPLE
DDATE:
19910723
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.

BILLY R. SIPPLE, EMPLOYED BY
SHILLELAGH MINING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 90-177
A.C. No. 46-03875-03547-A

No. 5 Mine

DECISION

Appearances: Edward H. Fitch, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for the Petitioner;
Billy R. Sipple, Logan, West Virginia, pro se,
for the Respondent.

Before: Judge Koutras

Statement of the Case

This proceeding concerns proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to section 110(c) of the Federal Mine Safety and Health Act of 1977, seeking civil penalty assessments in the amount of \$4,800, for eight (8) alleged violations of certain mandatory safety standards found in Part 75, Title 30, Code of Federal Regulations. The respondent is charged with "knowingly authorizing, ordering, or carrying out" the alleged violations.

The respondent filed an answer contesting the alleged violations and a hearing was convened in Charleston, West Virginia on June 5, 1991. The parties appeared and presented testimony and evidence in support of their respective positions. In the course of the hearing, the petitioner withdrew its proposals for assessment of civil penalties for two of the alleged violations (Citation/Order Nos. 2745972 and 2745973) and these alleged violations were dismissed from the bench. Subsequently, on June 19, 1991, petitioner's counsel advised me that the parties reached a settlement of the case, and the petitioner has now filed a motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of the proposed settlement.

~1175

The alleged violations, initial assessments, and the proposed settlement amounts are as follows:

Order No.	Date	30 C.F.R. Section	Assessment	Settlement
2745972	5/30/89	75.1317(a)	\$ 400	Withdrawn
2745973	6/1/89	75.1311(a)(1)	\$ 400	Withdrawn
2745974	6/1/89	75.1311(b)(3)	\$ 400	\$ 200
3235730	6/1/89	75.202(b)	\$1,200	\$ 850
3235731	6/1/89	75.213(d)(1)	\$1,200	\$ 850
3235732	6/1/89	75.202(b)	\$ 400	Withdrawn
3235733	6/1/89	75.202(b)	\$ 400	Withdrawn
3235737	6/1/89	75.220	\$ 400	\$ 100
			ÄÄÄÄÄÄÄ	ÄÄÄÄÄÄÄÄ
			\$4,800	\$2,000

The petitioner has withdrawn two additional alleged violations (Order Nos. 3235732 and 3235733) on the ground that insufficient evidence exists to establish that the respondent knowingly allowed the alleged violative conditions to exist. With regard to the four remaining alleged violations, the petitioner has submitted information pertaining to the civil penalty criteria found in section 110(i) of the Act and states that the reduced settlement amounts are based on the respondent's financial hardship as testified to at the hearing.

The parties have agreed that the settlement payment of \$2,000, will be paid by the respondent in monthly installment due on the 10th of the month and in accordance with the following installment schedule:

\$150 per month from July through December 1991

\$300 per month for January, February, and March 1992

\$200 final payment due April 1992

The parties also agreed that the payment checks or money orders shall be made payable to the "Mine Safety and Health Administration", shall include Docket No. WEVA 90-177 and Assessment No. 46-03875-03547-A, and shall be mailed to MSHA at P.O. Box 360250M, Pittsburgh, Pennsylvania 15251.

Conclusion

After careful review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of this case, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the motion filed by the petitioner IS GRANTED, and the settlement IS APPROVED.

ORDER

The respondent IS ORDERED to pay the agreed-upon civil penalty assessments in the aforementioned amounts and in accordance with the aforementioned payment schedule agreed to by the parties. This decision will not become final until such time as full payment is made by the respondent to the petitioner, and I retain jurisdiction in this matter until payment of all installments are remitted and received by the petitioner.

In the event the respondent fails to make full payment, or otherwise fails to comply with the terms of the settlement, petitioner is free to file a motion seeking appropriate sanctions or further action against the respondent, including a reopening of the case.

George A. Koutras
Administrative Law Judge