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CONSOLIDATION COAL V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY,
CONTESTANT

v.

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

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

v.

CONSOLIDATION COAL COMPANY,
RESPONDENT

CONTEST PROCEEDING

Docket No. WEVA 91-145-R
Citation No. 3315925; 1/22/91

Arkwright No. 1 Mine

Mine ID 46-01452

CIVIL PENALTY PROCEEDING

Docket No. WEVA 91-1597
A.C. No. 46-01452-03783

Arkwright No. 1 Mine

DECISION

Appearances: Walter J. Scheller III, Esq., Consolidation Coal Company, Pittsburgh, Pennsylvania for Consolidation Coal Company;
Charles M. Jackson, Esq., U.S. Department of Labor, Office of the Solicitor, Arlington, Virginia for U.S. Department of Labor.

Before: Judge Weisberger

These cases are before me based on a petition for assessment of civil penalty filed by the Secretary (Petitioner) alleging violations by the operator (Respondent) of various mandatory safety standards set forth in volume 30 of the Code of Federal Regulations. Pursuant to notice the cases were scheduled for a hearing, and were subsequently heard in Morgantown, West Virginia on October 9, 1991. At the commencement of the hearing counsel indicated that the issues raised by Citation Nos. 3315924, 3308078, and 3307876 were resolved by a settlement that had been agreed to by the parties.

On October 25, 1991, Petitioner filed a Motion to Approve Settlement with regard to these citations. In its motion, Petitioner indicates that Respondent has agreed to pay \$667, the full amount which had been proposed by Petitioner as a penalty for the violations alleged in these citations. I have considered

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the representations set forth in Petitioner's Motion to Approve Settlement, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Federal Mine Safety and Health Act of 1977 (the Act).

On October 9, 1991, at the hearing concerning Citation No. 3315925, subsequent to the conclusion of Respondent's case, Petitioner requested a continuance in order to respond to certain aspects of the testimony adduced by certain of Respondent's witness. The motion was granted, and the parties were granted until November 6, 1991, to engage in discovery and to present additional testimony. In its motion to approve settlement, Petitioner indicates that a settlement has been reached between the parties with regard to Citation No. 3315925. In essence, Petitioner represents that subsequent to an investigation into the facts of the violation, the evidence is not likely to show "a reasonable likelihood of serious injury existed if normal mining operations had continued", and accordingly it agrees that the facts do not set forth a conclusion that the violation cited was significant and substantial. This agreement is consistent with the evidence presented at the hearing on October 9, 1991. In addition, Petitioner indicates that the degree of Respondent's negligence is only low because of the existence of considerable mitigating circumstances. The representations in the Motion are consistent with the evidence presented at the hearing on October 9. In its motion, Petitioner indicates that the parties proposed a reduction in penalty from \$213 to \$150 for this violation.

I have considered the representations submitted in this motion, along with the evidence adduced at the hearing on October 9, 1991 and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

Wherefore it is ORDERED that the motion for approval of settlement is granted. It is further ORDERED that: (1) Citation No. 3315925 is modified to allege a violation that it is not significant and substantial, and which reflects a low degree of negligence on the part of Respondent; (2) Respondent is to abide by the terms and conditions agreed to by the parties, and defined in the motion to approve settlement; (3) Respondent shall pay a total penalty of \$817 within 30 days of the date of this decision.

Avram Weisberger
Administrative Law Judge