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

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

CIVIL PENALTY PROCEEDINGS

Docket No. LAKE 91-485
A.C. No. 11-00586-03653

v.

Murdock Mine

ZEIGLER COAL COMPANY,
RESPONDENT

Docket No. LAKE 91-498
A.C. No. 11-00612-03555

Spartan Mine

DECISIONS

Appearances: Rafael Alvarez, Esq., U.S. Department of Labor,
Office of the Solicitor, Chicago, Illinois, for
the Petitioner;
Gregory S. Keltner, Esq., Zeigler Coal Company,
Fairview Heights, IL, for the Respondent.

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern proposals for assessment of civil penalties 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 two alleged violations of certain mandatory safety standards found in Parts 70 and 75, Title 30, Code of Federal Regulations. The respondent filed timely answers denying the alleged violations, and the cases were docketed for hearings on the merits in St. Louis, Missouri, with two additional cases concerning these same parties. Those cases were heard on the merits, but the parties decided to settle the instant cases and they were afforded an opportunity to present oral arguments on the record in support of the proposed settlements, and bench decisions were rendered.

Stipulations

The parties stipulated to the following (ALJ-1):

1. The Commission has jurisdiction in these proceedings.

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2. The respondent owns and operates the subject mines.
3. The respondent's mines are underground mines which extract bituminous coal, and the mines affect interstate commerce.
4. The respondent extracted 14,918,109 tons of coal at all of its mines ending on February 5, 1991.
5. The respondent extracted 994,759 tons of coal from the Murdock Mine from February 5, 1990, to February 5, 1991.
6. The respondent had 183 violations in the preceding 24 months ending on May 30, 1991, at the Murdock Mine.
7. The payment of the full penalty assessment on each citation will not impair the respondent's ability to continue in business.

With respect to the respondent's Spartan Mine, the parties agreed that the mine produced 1,290,418 tons of coal from May, 1990, to May 1991. MSHA's counsel asserted that the mine had 56 violations during the 24 months preceding the issuance of the contested citation in Docket No. LAKE 91-498. This history includes five violations of 30 C.F.R. 70.100(a), (Tr. 7).

Discussion

Docket No. LAKE 91-485

In this case the respondent was served with a section 104(a) non-"S&S" Citation No. 3537733, on March 18, 1991, charging an alleged violation of mandatory safety standard 30 C.F.R. 75.512. The cited condition or practice states as follows:

The continuous miner was not being maintained in a safe operating condition. Under test the emergency stop (foot) switch failed to de-energize the tramming circuit.

Petitioner's counsel asserted that upon further investigation of this matter MSHA has determined that the cited regulation does not apply to the facts presented and that the citation was issued in error. Under the circumstances, counsel moved to vacate the citation and to withdraw MSHA's proposed civil penalty assessment. The motion was granted from the bench (Tr. 6-7). My bench decision is herein reaffirmed, and the citation IS VACATED.

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Docket No. LAKE 91-498

In this case the respondent was served with a section 104(a) "S&S" Citation No. 9941672, on April 2, 1991, charging an alleged violation of mandatory health standard 30 C.F.R. 70.100(a). The cited condition or practice states as follows:

The results of five (5) respirable dust samples collected by the operator as shown by computer message No. 003-0(036) dated March 20, 1991, indicates the average concentration of respirable dust in the working environment of the designated occupation in mechanized mining unit No. 003-0(036) was 2.3 mg/m³ which exceeded the applicable limit of 2.0 mg/m³. Management shall take corrective actions to lower the respirable dust and then sample each production shift until five (5) valid samples are taken.

The respondent did not dispute the fact of violation in this case. The parties agreed to a proposed settlement requiring the respondent to pay a civil penalty assessment of \$75 for the violation in question. In support of the reduced penalty assessment the petitioner's counsel asserted that although the designated occupation which was tested exceeded the legal respirable dust limit of 2.0 mg/m³, mine management has constantly taken the necessary corrective measures to maintain a dust-free working environment and that the mine has a traditional history of compliance with the respirable dust requirements. Further, counsel asserted that the violation was not the result of aggravated conduct by the respondent, and that the cited condition was timely abated in good faith (Tr. 8-10).

After careful consideration of the pleadings and arguments presented in support of the proposed settlement of this case, and taking into account the six statutory civil penalty criteria found in section 110(i) of the Act, the proposed settlement pursuant to Commission Rule 30, 29 C.F.R. 2700.30, was approved from the bench (Tr. 11). My decision in this regard is herein reaffirmed.

ORDER

Docket No. LAKE 91-485. Section 104(a) Citation No. 3537733, March 18, 1991, 30 C.F.R. 75.512, IS VACATED. The petitioner's proposed civil penalty assessment is WITHDRAWN AND DISMISSED.

Docket No. LAKE 91-498. Section 104(a) Citation No. 9941672, April 2, 1991, 30 C.F.R. 70.100(a), IS AFFIRMED. The respondent shall pay a civil penalty assessment of \$75 in satisfaction of the violation. Payment is to be made to MSHA

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within thirty (30) days of the date of this decision and order,
and upon receipt of payment, this proceeding is dismissed.

George A. Koutras
Administrative Law Judge