

CCASE:  
MSHA V. PYRAMID MINING  
DDATE:  
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 92-136  
Petitioner:A. C. No. 15-11620-03527  
v. :  
:Hall No. 2 Mine  
PYRAMID MINING, INCORPORATED, :  
Respondent:

PARTIAL DECISION

Appearances: Mary Sue Taylor, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee for  
Petitioner;  
Frank Stainback, Esq., Holbrook, Wible, Sullivan,  
& Mountjoy, P.S.C., Owensboro, Kentucky for  
Respondent.

Before: Judge Weisberger

This civil penalty proceeding was scheduled for hearing in  
Owensboro, Kentucky, on April 1, 1992. At the commencement of  
the hearing I was advised by counsel that they were in the  
process of negotiating a settlement. Subsequently the  
particulars of the settlement, and the motion to approve it were  
placed on the record.

Citation Nos. 9897840, 3416900, and 3416892

Counsel for the Secretary indicated that Citation Nos.  
9897840, 3416900 and 3416892 were to be vacated and asked that  
the petition for assessment of civil penalty for these citations  
be withdrawn. Pursuant to 29 C.F.R. 2700.11 the Secretary's  
Motion is granted.

Citation No. 3416891

This Citation alleges a significant and substantial  
violation of 30 C.F.R. 77.1104 in that combustible materials,  
hydraulic oil, and grease, were permitted to accumulate around  
the engine of a caterpillar. It was represented that at the time  
of the inspection, the equipment was not in actual use, and had  
been taken out of service, as a hose had blown prior to the  
inspection. It also was represented that the operator was in the  
process of cleaning the accumulation on the equipment. It was  
proposed to reduce the penalty from the proposed assessment \$79  
to \$20, and amend the citation to be not significant and  
substantial. I accepted the representations of the parties and

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concluded that the settlement is appropriate under the criteria set forth in Section 110(i) of the Federal Mine Safety and Health Act of 1977.

Citation No. 3416984

Citation No. 3416984 alleges a violation of 30 C.F.R. 77.404(a) in that no safety devices were provided to keep dolly carriage from coming loose from the overhead rail. The citation further alleges that the operator's negligence was moderate. At the hearing, it was represented that the hoist in question was installed in accordance with the specification of the manufacturer. It was proposed to reduce the penalty of \$79 to \$43, and to indicate that the operator was not negligent. I accepted the representations of counsel and concluded that the proposed settlement is appropriate under the terms of Section 110(i) of the Act.

Citation No. 3416898

Respondent, on March 19, 1992, filed a motion to continue the hearing with respect to Citation No. 3416898. In a telephone conference call on March 26, 1992, with counsel for both parties, counsel for the Secretary indicated that she did not oppose this motion. Accordingly, and for the reasons set forth in the motion, the motion was granted.

ORDER

It is ORDERED that: (1) Citation Nos. 9897840, 3416900, and 3416892 be DISMISSED; (2) Citation No. 3416891 be amended to indicate a violation that is not significant and substantial; (3) Citation No. 3416984 be amended to indicated that the operator was not negligent; (4) Respondent shall pay \$63 within 30 days of the date of this decision as a civil penalty; (5) further proceedings with regard to Citation 3416898 be stayed, pending the filing of a petition of assessment of civil penalty with regard to Citation No. 3416897.

Avram Weisberger  
Administrative Law Judge

Distribution:

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