

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

THE FEDERAL BUILDING
1244 SPEER BOULEVARD 1280
DENVER, CO 80204-3582
(303) 844-5266 | Frs 564-5266

MAY 27 1992

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), :
Petitioner : Docket No. WEST 91-174
: A.C. No. 42-00171-03607

v. :

CYPRUS-PLATEAU MINING, : Star Point No. 2 Mine
CORPORATION, :
Respondent :

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), :
Petitioner : Docket No. WEST 91-635
: A.C. No. 42-00171-03621 A

v. :

ROBERT Q. POWELL, employed : Star Point No. 2
by CYPRUS-PLATEAU MINING :
CORPORATION, :
Respondent :

CYPRUS PLATEAU MINING : CONTEST PROCEEDING
CORPORATION, :
Contestant :

v. :

SECRETARY OF LABOR, : Star Point No. 2 Mine
MINE SAFETY AND HEALTH :
REVIEW COMMISSION (MSHA), : Mine I.D. 42-00171
Respondent :

. DECISION

Appearances: Margaret A. Miller, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner/Respondent;
R. Henry Moore, Esq., BUCHANAN INGERSOLL, Pitts-
burgh, Pennsylvania,
for Respondent/Contestant.

Before: Judge Morris

These penalty and contest cases arise under the Federal Mine Safety and Health Act of 1977, U.S.C § 801, et seq. (the "Act").

On November 13, 1991, Petitioner filed a MOTION To APPROVE PARTIAL SETTLEMENT, and on December 3, 1991, the Presiding Judge issued a DECISION APPROVING PARTIAL SETTLEMENT. The settlement disposed of seven Citations. Order No. 3583459 remained at issue and the Judge retained jurisdiction to resolve such issues.

A copy of the Judge's DECISION APPROVING PARTIAL SETTLEMENT is attached to this Decision.

A hearing on the merits commenced as to the remaining Order on March 5, 1992, in Salt Lake City, Utah. The hearing could not be concluded and continued to the following day.

On March 6, 1992, the parties reached an amicable settlement agreement, which encompassed all three pending cases.

In connection with Docket No. WEST 92-173 and WEST 91-174, the parties moved that Order No. 3583459 be modified to a **104(a)** Citation.

Further, the parties moved that wherever a violation of 30 C.F.R. § 75.512 is alleged, it should be amended to allege a violation of 30 C.F.R. § 75.517. The violation of Section 75.517 is designated as an S&S Citation.

The parties further stipulated that an appropriate civil penalty is \$345.00. The violation was originally assessed at \$1000.00.

In view of the disposition herein, Cyprus Plateau further withdraws its notice of contest in WEST 92-173-R.

For the foregoing reason, I enter the following:

ORDER

1. The motions to amend Order No. 3583459 and its modifications are GRANTED.

2. Citation No. 3583459 and the amended civil penalty are **AFFIRMED.**

3. Cyprus Plateau is ORDERED TO PAY to the Secretary of Labor the sum of \$345 within 40 days of the date of this decision.

4. The motion of Cyprus Plateau to withdraw its contest in WEST 92-173-R is GRANTED and the said case is DISMISSED.

5. The Secretary's motion to dismiss WEST 91-635 (Robert Q. Powell) is GRANTED and said case is DISMISSED.


JOHN J. MORRIS
Administrative Law Judge

Distribution:

Margaret A. Miller, Esq., Office of the Solicitor, U.S. Department of Labor, 1585 Federal Office Building, 1961 Stout Street, Denver, CO 80294 (Certified Mail)

R. Henry Moore, Esq., BUCHANAN INGERSOLL P.C., CYPRUS PLATEAU MINING CORP., USX Tower, 57th Floor, 600 Grant Street, Pittsburgh, PA 15219 (Certified Mail)

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