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MSHA V. CONSOLIDATION COAL
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 92-798
Petitioner : A.C. No. 46-01968-03980
v. :
: Blacksville No. 2 Mine
CONSOLIDATION COAL COMPANY, :
Respondent :

PARTIAL DECISION APPROVING
SETTLEMENT AND STAY ORDER

Appearances: Caryl Casden, Esq., U.S. Department of Labor
Office of the Solicitor,
Arlington, Virginia for Petitioner;
Daniel Rogers, Esq., Consolidation
Coal Company, Pittsburgh, Pennsylvania,
for Respondent.

Before: Judge Feldman

A hearing in Docket No. WEVA 92-798, was held on November 17, 1992, in Morgantown, West Virginia.(Footnote 1) This proceeding involves two 104(a) Citations. At the hearing the parties moved for approval of their settlement agreement with respect to Citation No. 3715434. The parties also jointly moved for a stay of the remaining Citation No. 3720751(Footnote 2). The parties' joint motions were granted on the record as reflected in this decision.

Citation No. 3715934 alleges a violation of the regulatory standard found at 30 C.F.R. Section 75.904, namely, a failure to adequately mark circuit breakers for identification. At the hearing, the Secretary moved to amend the proposed penalty from \$1,155 to \$350. The proposed penalty reduction was based on an

1 This docket proceeding was contemporaneously tried with Docket Nos. WEVA 92-799, 92-800, 92-801. These cases will be adjudicated in a subsequent decision.

2Citation No. 3720751 was initially issued as a 104(d)(2) order. However, it was subsequently modified to 104(a) citation.

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error in the initial calculation. The parties represented that the respondent has agreed to pay the amended \$350 proposed penalty. As noted on the record, based on the parties' representations at the hearing, I conclude that the proffered settlement is appropriate under the criteria contained in Section 110(i) of the Mine Act.

Citation No. 3720751 was issued as a result of the respondent's alleged failure to timely abate an alleged violation of the respirable dust concentration standard on the longwall jack setter occupation (041) on the 14-M longwall. The respirable dust concentration in question was obtained through the Secretary's single sample spot inspection method. The validity of this method of dust sampling is currently before Judge Weisberger in Keystone Coal Company Docket Nos. PENN 91-1480-R, 91-1454-R, 92-54-R, 92-114 and 92-119. The parties have jointly moved to stay further action on this citation pending final disposition in the Keystone case. While the respondent concedes that it had an obligation to timely abate the condition despite its appeal of the underlying dust concentration violation, the parties maintain that the ultimate resolution in Keystone may have a bearing on the respondent's inclination to settle and on the appropriate penalty to be assessed. Good cause having been shown, the parties joint motion to stay this proceeding as it pertains to Citation No. 3720751 will be GRANTED.

CONCLUSION

ACCORDINGLY, the joint motion for the approval of settlement of Citation No. 3715934 IS GRANTED, and IT IS ORDERED that the respondent pay a penalty \$350 within 30 days of the date of this decision. IT IS FURTHER ORDERED that this docket proceeding as it pertains to Citation No. 3720751 IS STAYED pending the disposition in Keystone Coal Company, supra.

Jerold Feldman
Administrative Law Judge

Distribution:

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