

CCASE:  
SONLOLIDATION COAL V. SOL (MSHA)  
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CONSOLIDATION COAL COMPANY,	:	CONTEST PROCEEDING
Contestant	:	
	:	Docket No. WEVA 91-224-R
	:	Citation No. 3315515; 2/14/91
v.	:	
	:	Docket No. WEVA 91-227-R
	:	Citation No. 3315517; 2/19/91
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 91-229-R
ADMINISTRATION (MSHA),	:	Citation No. 3315562; 2/21/91
Respondent	:	
	:	Arkwright No. 1 Mine
	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 92-1159
Petitioner	:	A. C. No. 46-01452-03876R
	:	
v.	:	
	:	Arkwright No. 1 Mine
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT  
ORDER TO MODIFY  
ORDER LIFTING STAY  
ORDER OF DISMISSAL  
ORDER TO PAY

Before: Judge Merlin

The above-captioned cases were the subject of an extensive conference call between the undersigned and the parties on February 1, 1993. On February 12, 1993, the Solicitor filed a motion to approve settlement of the eighteen violations involved in this case. Three of the violations, Citation Nos. 3315515, 3315517, and 3315562, were also the subject of notice of contest proceedings, WEVA 91-224-R, 91-227-R and 91-229-R. The originally assessed penalties were \$4,380 and the proposed settlements are for \$2,677.

The Solicitor advises that the operator has agreed to pay the originally assessed penalty for nine of the violations, Citation Nos. 3315515, 3315562, 3306386, 3306387, 3314481, 3314482, 3314883, 3306397, and 3314484. I have reviewed these

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violations along with the Solicitor's motion and find that the proposed penalties are appropriate. The Solicitor moves to dismiss Citation Nos. 3315576, 3315577, 3315578, 3315579, and 3315580 because they were previously contained in WEVA 91-1833 and were incorrectly duplicated in this case.

The Solicitor also requests that Citation Nos. 3315517, 3315573, 3315574 and Order No. 3306392 be modified.

Citation No. 3315517 was issued for a violation of 30 C.F.R. 75.1403 because the red reflector for a turn was off the shaft heading switch. The originally assessed penalty was \$157 and the proposed settlement is \$94. The Solicitor requests that the citation be modified to reduce the likelihood of injury from reasonably likely to unlikely and to delete the significant and substantial designation. The reason for the reduction and modification is that gravity was less than originally thought. As the Solicitor advised during the conference call, the indicator was visible under normal lighting even without the reflector.

Citation No. 3315573 was issued for a violation of 30 C.F.R. 77.1104 because fine dry coal and coal dust accumulated on the raw coal crusher frame and floor, and fine damp coal accumulated at the transfer. The originally assessed penalty was \$157 and the proposed settlement is \$94. The Solicitor requests that the citation be modified to reduce the likelihood of injury from reasonably likely to unlikely and to delete the significant and substantial designation. The reason for the reduction and modification is that gravity was not as high as originally thought. As the Solicitor advised during the conference call, the raw coal crusher was run only once a week and not for a long enough time to generate heat to ignite the combustible material.

Citation No. 3315574 was issued for a violation of 30 C.F.R. 77.402 because an electric drill in the repair shop was equipped with a switch lock. The originally assessed penalty was \$213 and the proposed settlement is \$120. The Solicitor requests that the citation be modified to reduce the likelihood of injury from reasonably likely to unlikely and to delete the significant and substantial designation. The reason for the reduction and modification is that gravity was not as high as originally thought. As the Solicitor advised during the conference call, the drill had recently been purchased and was stored in a sealed box awaiting modification of the switch to comply with the Act which would have been done before normal mining operations began. These circumstances also reduce negligence.

Order No. 3306392 was issued as a 104(d)(2) order for a violation of 30 C.F.R. 75.400 because float coal dust accumulated on the bottom, roof and ribs from halfway between Nos. 2 and 3 entries to the No. 4 entry. The originally assessed penalty was \$769 and the proposed settlement is \$350. The

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Solicitor request that the order be modified from a 104(d)(2) order to a 104(a) citation and that negligence be reduced from high to moderate. The reason for the modification and reduction is that negligence was not as high as originally thought. As the Solicitor advised during the conference call the accumulation arose because the miner responsible to rock dust this area was assigned to other duties in order to abate citations that had been written earlier by the inspector. The operator's conduct was therefore not "aggravated". Emery Mining Corp., 9 FMSHRC 1997 (Dec. 1987)

I have considered the representations and documentation submitted in this case along with the discussions on February 1, and I conclude that the proffered settlements are appropriate under the criteria set forth in section 110(i) of the Act.

In light of the foregoing, the motion for approval of settlements is GRANTED.

It is ORDERED that Citation Nos. 3315517, 3315573, and 3315574 be MODIFIED to reduce the likelihood of an injury from reasonably likely to unlikely and to delete the significant and substantial designations.

It is ORDERED that Order No. 3306392 be MODIFIED from a 104(d)(2) order to a 104(a) citation and to reduce negligence from high to moderate.

It is further ORDERED that the stays in WEVA 91-224-R, 91-227-R and 91-229-R be LIFTED and that these cases be DISMISSED.

It is further ORDERED that Citation Nos. 3315576, 3315577, 3315578, 3315579, and 3315580 be DISMISSED without prejudice to the operator's notice of contest or the Secretary's penalty petition filed in Docket No. WEVA 91-1833.

It is further ORDERED that the operator pay a penalty of \$2,677 within 30 days of the date of this decision.

Paul Merlin  
Chief Administrative Law Judge

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