

CCASE:
SOL (MSHA) V. CONSOLIDATION COAL
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SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 92-1011
Petitioner	:	A. C. No. 46-01452-03860
	:	
v.	:	
	:	
CONSOLIDATION COAL COMPANY,	:	Arkwright No. 1
Respondent	:	

DECISION APPROVING SETTLEMENT
ORDER TO MODIFY
ORDER TO PAY

Before: Judge Merlin

The above-captioned case was the subject of an extensive conference call between the undersigned and the counsel for both parties on February 1, 1993.

In accordance with the conference call discussion, the Solicitor, on February 12, 1993, filed a motion to approve settlement of the two violations involved in this case. The originally assessed penalties were \$338 and the proposed settlements are for \$265.

The Solicitor advises that the operator has agreed to pay the originally assessed penalty for Citation No. 3717918. I have reviewed this violation along with the Solicitor's motion and find that the proposed penalty is appropriate.

With respect to the other violation in this case, Citation No. 3717916, the Solicitor requests that the citation be modified by changing the evaluation of negligence from moderate to low and reducing the proposed penalty from \$288 to \$215. Citation No. 3717916 was issued for a violation of 30 C.F.R. 75.503 because the conduit for the right side bolter emergency stop switch on the continuous mining machine was pulled out of its gland. As became apparent during the conference call, the reason for the reduction and modification was that the condition had not been present when the equipment was examined earlier in the shift but must have developed immediately prior to the issuance of the citation.

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.

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

It is ORDERED that Citation No. 3717916 be MODIFIED to reduce negligence from moderate to low.

It is further ORDERED that the operator pay a penalty of \$265 within 30 days of the date of this decision.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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