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SOL (MSHA) V. CONSOLIDATION COAL
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 92-1194
Petitioner : A.C. No. 46-01455-03928 R
v. :
: Osage No. 3 Mine
CONSOLIDATION COAL COMPANY, :
Respondent :

PARTIAL DECISION

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

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments for thirteen (13) alleged violations of certain mandatory safety standards found in Part 75, Title 30, Code of Federal Regulations.

The respondent filed a timely answer and contest, and in response to a prehearing order the parties informed me that they proposed to settle eleven (11) of the alleged violations. During a subsequent prehearing conference, the parties presented arguments in support of their proposed settlements, and they were tentatively approved by me pending disposition of the two remaining alleged violations which the parties were unable to settle. The citations, initial assessments, and the settlement amounts are as follows:

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3716253	9/9/91	75.1105	\$20	\$20
3716194	9/11/91	75.1403-8(d)	\$227	\$227
3716047	10/11/91	75.1403-9(c)	\$276	\$276
3716050	10/11/91	75.220	\$276	\$276

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3716051	10/11/91	75.202(a)	\$206	\$206
3716052	10/11/91	75.1403	\$227	\$206
3716121	10/16/91	75.313	\$276	\$276
3716122	10/17/91	75.1403-9(a)	\$227	\$227
3315900	10/23/91	75.314	\$413	\$248
3716127	10/25/91	75.400	\$276	\$166
3716128	10/25/91	75.1100-3	\$276	\$166

Discussion

In support of the proposed settlements, the parties presented information pertaining to the six statutory civil penalty criteria found in section 110(i) of the Act. In addition, in the course of two prehearing conferences, the parties discussed the circumstances surrounding the issuances of the contested citations, and their proposed settlement dispositions. The respondent agreed to pay the full amount of the proposed civil penalty assessments for eight (8) of the citations and to accept the citations as issued. With respect to Citation Nos. 3315900, 3716127, and 371628, the petitioner's counsel agreed to delete the "S&S" designations on the ground that the evidence at trial would not support those findings, and the respondent agreed to pay the modified civil penalty assessments for those citations in settlement of the violations.

With regard to the two remaining citations in this proceeding (Citation Nos. 3716124 and 3716254), the parties were unable to reach a settlement, and the matters were consolidated for hearing with several other cases heard in Morgantown, West Virginia, on June 15, 1993. In the course of the hearings, the parties informed me that after further discussions and negotiations, they proposed to settle Citation No. 3716124, and they were afforded an opportunity to present supporting arguments on the record.

Section 104(a) "S&S" Citation No. 3716124, concerns an alleged violation of mandatory safety standard 30 C.F.R. 75.604(b), issued by MSHA Inspector Lynn Workley on October 25, 1991, for an improperly made splice in a shuttle car trailing cable. The petitioner's counsel stated that after further consultation with the inspector, who was present in the courtroom, the inspector agreed that the location of the splice made it unlikely that anyone would come in contact with it, and that under the circumstances, if the matter were to proceed to trial, the petitioner did not believe that the evidence would support the inspector's "S&S" finding. I take note of the fact that the splice was redone and properly insulated and sealed within 15 minutes after the inspector issued the citation. The initial proposed penalty assessment for the violation was \$276, and the parties proposed to settle the matter by deleting the "S&S"

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finding, and the respondent agreed to pay a penalty assessment of \$166, for the violation and modified citation.

Findings and Conclusions

After careful consideration of the pleadings, arguments, and submissions in support of the proposed settlement, and pursuant to the requirements of Commission Rule 31, 29 C.F.R. 2700.31, the proposed settlement was approved from the bench, and my decision is herein reaffirmed. In addition, my previous tentative decisions approving the settlements with respect to the aforementioned eleven (11) citations are likewise finalized and reaffirmed.

With respect to section 104(a) Citation No. 3176254, issued on September 9, 1991, citing an alleged violation of 30 C.F.R.

75.1105, the parties jointly moved that this citation be consolidated with three similar citations issued by the same inspector and which are pending for trial before Judge William Fauver in Docket No. WEVA 92-1193. In support of their oral motion, the parties confirmed that all of these contested section 75.1105 alleged violations involve identical factual and legal issues and that in the interest of judicial efficiency they should all be adjudicated by one judge. The motion was granted.

ORDER

The respondent IS ORDERED to pay civil penalty assessments in the settlement amounts shown above in satisfaction of each of the contested citations in question. Payment is to be made to the petitioner (MSHA) within thirty (30) days of the date of this partial decision and order. Further administrative action will be taken to transfer the remaining Citation No. 3716254, to Judge Fauver, and the parties will be further notified when this is done.

George A. Koutras
Administrative Law Judge

Distribution:

Wanda Johnson, Esq., Office of the Solicitor, U.S. Department of Labor, 4015 Wilson Blvd., Rm. 516, Arlington, VA 22203
(Certified Mail)

Daniel E. Rogers, Esq., Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, PA 15241-1421 (Certified Mail)

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