

CCASE:
SOL (MSHA) V. ASAMERA MINERAL (US)
DDATE:
19930611
TTEXT:

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 92-802-M
Petitioner	:	A. C. No. 45-02961-05553
	:	
v.	:	
	:	
ASAMERA MINERAL (US), INC.,	:	
Respondent	:	
	:	Cannon Mine

ORDER DISAPPROVING SETTLEMENT
ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

This case is before me upon a petition for the assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. The parties have filed a joint motion to approve settlement of the one violation involved in this case. The settlement seeks a reduction in the penalty amount from the originally assessed amount of \$100 to \$50.

A review of the file discloses that the citation was issued on the ground that the operator allegedly altered an accident scene before MSHA could investigate. MSHA issued a special assessment for the violation, although the narrative findings of the special assessment represents that the violation was not serious. The settlement motion asserts in part that the special assessment was not warranted and states further that negligence and gravity are reduced to a level where a single assessment of \$50 is appropriate.

The settlement motion is inadequate because it provides no reasons to support the 50% reduction in what was already a very modest penalty assessment. None of the circumstances under which the accident scene was altered are described. And there is no discussion of the effect of the alteration of the accident scene. As a general matter, alteration by the operator of a accident scene prior to investigation would seem to me to be a serious matter involving some degree of fault by the operator. In this connection, I note that the inspector on the citation found that negligence was high, but that the narrative statement appears to find only ordinary negligence, although the finding of high negligence is not specifically contradicted. The settlement motion does not discuss negligence beyond stating that the finding of negligence is supportable. High negligence is, of course not consistent with a penalty of \$50.

~1300

The amounts involved in this case are not significant, but the principles are. The parties are reminded that the Commission and its judges bear a heavy responsibility in settlement cases pursuant to section 110(k) of the Act. 30 U.S.C. 820(k); See, S. Rep. No. 95-181, 95th Cong., 1st Sess. 44-45, reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 632-633 (1978). The Commission has the duty to determine the appropriate amount of penalty, in accordance with the six criteria set forth in section 110(i) of the Act. Sellersburg Stone Company v. Federal Mine Safety and Health Review Commission, 736 F.2d 1147 (7th Cir. 1984).

Based upon the parties' motion, I cannot conclude that the recommended penalty reduction is warranted and that the suggested amount is consistent with the factors mandated in section 110(i). The parties must provide explicit reasons for the action they recommend.

In light of the foregoing, it is ORDERED that the motion for approval of settlement be DENIED.

It is further ORDERED that within 30 days of the date of this order the parties submit additional information to support their motion for settlement. Otherwise this case will be assigned and set for hearing.

Paul Merlin
Chief Administrative Law Judge

Distribution:

Douglas White, Esq., Counsel, Trial Litigation, Office of the Solicitor, U.S. Department of Labor, 4015 Wilson Blvd., Arlington, VA 22203 (Certified Mail)

Robert A. Friel, Esq., Office of the Solicitor, U. S. Department of Labor, 1111 Third Avenue, Suite 945, Seattle, WA 98101-3212 (Certified Mail)

Mr. Melvin J. Wattula, Manager, Asamera Minerals (US), Inc., P.O. Box 398, Wenatchee, WA 98801 (Certified Mail)

/gl