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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 92-1049
Petitioner : A.C. No. 46-01867-03929
v. :
 : Blacksville No. 1
CONSOLIDATION COAL COMPANY, :
Respondent :

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:

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 three (3) alleged violations of the mandatory accident reporting requirements found in 30 C.F.R.

50.11(b)(8). The respondent filed a timely answer and contest and in response to a prehearing order, the parties informed me that they were unable to agree to a settlement of the contested citations and that a hearing would be required. Accordingly, the matter was consolidated with several other cases involving these same parties, and a hearing was held in Morgantown, West Virginia, on June 15, 1993.

Discussion

This case concerns three (3) section 104(a) non-"S&S" citations (Nos. 3718403, 3718404, 3718405), issued by MSHA Inspector Joseph A. Migaiolo on May 12, 1992, charging the respondent with alleged violations of mandatory accident, injuries, and illness reporting standard 30 C.F.R. 50.11(b)(8). The citations were issued in the course of an audit of mine records conducted by the inspector when he found that three accident investigation reports prepared by the respondent concerning three lost workday accidents that occurred on January 1 and 19, 1989, and September 21, 1989, did not include

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"a description of steps taken to prevent a similar occurrence in the future", as required by the cited section 50.11(b)(8).

In the course of the hearing the parties informed me that after further discussions and negotiations, they proposed to settle the disputed citations, and they presented arguments on the record in support of their proposals (Tr. 14-16).

In support of the proposed settlements, the parties incorporated by reference the previously submitted prehearing responses which included information concerning the six statutory civil penalty criteria found in section 110(i) of the Act, summaries of the testimony of their respective witnesses, jurisdictional stipulations, and summaries of the position taken by the parties with respect to the alleged violations.

In further support of the proposed settlement, petitioner's counsel agreed that the cited conditions were "technical violations" that occurred several years ago, but were only discovered in the course of the audit conducted by the inspector. Respondent's counsel pointed out that the required accident reports were in fact prepared, but he took the position that due to the repetitive nature of the reported injuries, it would have been repetitive and unnecessary to make recommendations concerning future preventive measures.

I take note of the fact that section 50.11(b), requires the submission of nine (9) items of information concerning each reportable occupational injury, and on the facts here presented the respondent was cited for failing to include information concerning item (8) which requires a description of the steps taken by the respondent to prevent similar occurrences. Upon review of the citations, and the pretrial submissions by the parties, I agree with the petitioner's characterization of the violations as "technical in nature", and although the required information was not submitted as part of the respondent's accident reports, I find the mitigating circumstances advanced by the respondent both plausible and reasonable.

The parties agreed that the citations should be affirmed as issued, and they agreed that the initial proposed civil penalty assessments of \$50 for each of the non-"S&S" citations should be modified to \$20 for each citation in compliance with the applicable MSHA penalty assessment criteria and procedures in effect at the time the citations were issued. The respondent agreed to pay the modified assessments.

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,

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the proposed settlement was approved from the bench, and my decision is herein reaffirmed (Tr. 16).

ORDER

The respondent IS ORDERED to pay civil penalty assessments in the amount of sixty-dollars (\$60), (\$20 for each citation), in satisfaction of the violations in question. Payment is to be made to the petitioner (MSHA) within thirty (30) days of this decision and order, and upon receipt of payment, this matter is dismissed.

George A. Koutras
Administrative Law Judge

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