

CCASE:  
SOL (MSHA) V. COSTAIN COAL  
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 92-1073  
Petitioner : A.C. No. 15-13920-03788  
v. :  
: Docket No. KENT 92-1110  
COSTAIN COAL INCORPORATED, : A.C. No. 15-13920-03789  
Respondent :  
: Docket No. KENT 93-25  
: A.C. No. 15-13920-03793  
:  
: Docket No. KENT 93-206  
: A.C. No. 15-13920-03798  
:  
: Docket No. KENT 93-261  
: A.C. No. 15-13920-03799  
:  
: Pyro #9 Wheatcroft  
:  
: Docket No. KENT 93-260  
: A.C. No. 15-14492-03626  
:  
: Docket No. KENT 92-1049  
: A.C. No. 15-14492-3616 R  
:  
: Baker Mine

#### DECISIONS

Appearances: Mary Sue Taylor, Esq., Office of the Solicitor,  
U.S. Department of Labor, for the Petitioner;  
Carl B. Boyd, Esq., Henderson, Kentucky, and  
R. Eberley Davis, Esq., Costain Coal Inc.,  
Sturgis, Kentucky, for the Respondent.

Before: Judge Koutras

#### Statement of the Proceedings

These proceedings concern proposals for assessment of civil penalties 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 twenty-two (22) alleged violations of certain mandatory safety standards found in Part 75, Title 30, Code of Federal Regulations. The respondent filed timely answers and contests,

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and in response to a prehearing order, the petitioner's counsel informed me that the parties proposed to settle most of the disputed citations, but were unable to resolve others. Under the circumstances, the cases were consolidated with other cases involving these same parties, and hearings were held in Evansville, Indiana, on June 8, 1993.

#### Discussion

In the course of the hearings, the parties informed me that the respondent agreed to pay the full amount of the initial proposed civil penalty assessments for sixteen (16) of the disputed citations in settlement of the violations. With respect to the remaining six (6) disputed citations, the parties informed me that after further discussions and negotiations, they proposed to settle the violations, and arguments in support of the proposed settlements were made and heard on the record (Tr. 5-11; 137-140).

Citation No. 3858304. The citation was issued after the inspector observed equipment tracks which led him to believe that a shuttle car trailing cable had been run over. The petitioner's counsel asserted that the evidence reflects that the cable was not damaged, and that the facts would not support the inspector's "S&S" finding. Under the circumstances, counsel concluded that the citation should be modified to a section 104(a) non-"S&S" citation, and the respondent agreed to pay the reduced penalty assessment.

Citation Nos. 3857517 and 3857734. With respect to Citation No. 3857517, petitioner's counsel stated that the available evidence supports a modification of the inspector's gravity finding because the number of miners exposed to any potential hazard was less than originally believed by the inspector. With regard to Citation No. 3857734, petitioner's counsel stated that the available evidence reflects a low degree of negligence, rather than the moderate negligence finding originally by the inspector. Under the circumstances, the parties believed that the reduced settlement penalty assessments were reasonable and warranted, and the respondent agreed to pay the modified penalties in settlement of the violations in question.

Citation Nos. 3552688, 3552693, and 3553249. The parties were in agreement that the available evidence reflects that the inspector failed to take any dust samples to support his gravity findings with respect to Citation No. 3553688, and the petitioner's counsel stated that the citation will be modified to

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reflect a non-"S&S" violation. Petitioner's counsel further stated that the available evidence reflects that the hazard exposure associated with Citation No. 3552693, was less than originally believed by the inspector, and that the inspector's gravity finding will be modified to accurately reflect the number of miners exposed to the potential hazard. With respect to Citation No. 3553249, petitioner's counsel asserted that the available evidence reflects a low degree of negligence rather than the moderate negligence finding originally made by the inspector, and that the citation will be modified accordingly. The parties believed that the reduced penalty amounts for these citations were reasonable and warranted, and the respondent agreed to pay the modified penalties in settlement of the violations in question.

#### Findings and Conclusions

In addition to the arguments presented on the record in support of the proposed settlements, the parties also presented information concerning the six statutory civil penalty criteria found in section 110(i) of the Act. After careful review and consideration of the pleadings, arguments, and submissions in support of the proposed settlements, and pursuant to Commission Rule 31, 29 C.F.R. 2700.31, I rendered bench decisions approving the proposed settlements. Upon further review of the entire record, I conclude and find that the settlement dispositions which have been approved are reasonable and in the public interest, and my bench decisions are herein reaffirmed. The citations, initial assessments, and the settlement amounts are as follows:

Docket No. KENT 92-1073

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3857393	7/27/92	75.304	\$362	\$362
3857397	7/28/92	75.517	\$235	\$235

Docket No. KENT 92-1110

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3857390	7/23/92	75.202	\$987	\$987

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Docket No. KENT 93-25

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3553192	7/6/92	75.400	\$2,301	\$2,301
3552416	7/29/92	75.402	\$506	\$506

Docket No. 93-206

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3859297	10/8/92	75.516-2(b)	\$50	\$50

Docket No. KENT 93-261

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3552688	10/6/92	75.316	\$235	\$50
3552693	10/8/92	75.400	\$506	\$362
3552694	10/8/92	75.402	\$506	\$506
3859298	10/8/92	75.316	\$288	\$288
3857489	10/26/92	75.316	\$235	\$235
3553249	11/23/92	75.400	\$690	\$309

Docket No. KENT 93-260

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3857517	10/14/92	75.400	\$506	\$362
3859147	10/23/92	75.517	\$204	\$204
3857734	11/4/92	75.316	\$204	\$154

Docket No. KENT 92-1049

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3858304	8/29/91	75.606	\$147	\$50
3858307	8/30/91	75.400	\$157	\$157
3858308	9/16/91	75.400	\$206	\$206
3546628	10/21/91	75.400	\$227	\$227
3858168	10/22/91	75.400	\$227	\$227
3546381	10/30/91	75.400	\$147	\$147
3546389	11/26/91	75.400	\$206	\$206

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ORDER

The respondent IS ORDERED to pay civil penalties in the settlement amounts shown above in satisfaction of the violations in question. Payment is to be made to MSHA within thirty (30) days of the date of these decisions and order, and upon receipt of payment, these proceedings are dismissed.

George A. Koutras  
Administrative Law Judge

Distribution:

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