

CCASE:  
MSHA V. CONSOLIDATION COAL  
DDATE:  
19930803  
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 92-992
Petitioner	:	A.C. No. 46-01453-04013
v.	:	
	:	Docket No. WEVA 92-993
CONSOLIDATION COAL COMPANY,	:	A.C. No. 46-01453-04014
Respondent	:	
	:	Docket No. WEVA 92-1042
	:	A.C. No. 46-01453-04020
	:	
	:	Humphrey No. 7 Mine

FINAL DECISION

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

Before: Judge Barbour

STATEMENT OF THE CASE

On June 30, 1993, I issued a Partial Decision Pending Final Order in these matters in which I retained jurisdiction pending resolution by the parties of all issues pertaining to Citation No. 3108613, Docket No. WEVA 92-992, a citation issued pursuant to Section 104(a) of the Mine Act, 30 U.S.C.

814(a). I did so upon the oral assurance of counsels that th parties fully expected to settle the matter based upon the then forthcoming decision of another Administrative Law Judge. Consolidation Coal Co., 15 FMSHRC\_\_\_\_\_, Docket No. WEVA 92-992, etc. (June 30, 1993) slip op. 3, 32.

The parties now have reached a settlement and the Secretary has filed a motion pursuant to Commission Rule 30, 29 C.F.R.

2700.30, seeking approval of the proposed settlement. Th citation, initial assessment, and the proposed settlement amount is as follows:

			WEVA 92-992	
		30 C.F.R.		
Citation No.	Date	Section	Assessment	Settlement

3108613

1/28/92

75.1003(c)

\$206

\$124

The Partial Decision Pending Final Order contains findings regarding applicable civil penalty criteria. Consolidation Coal Co., supra, slip op. 30-31. Citation No. 3548397, which was issued because the trolley wire at a mantrip station was not adequately guarded over one of two personnel carriers, which contains the inspector's finding that the violation of section 75.1003(c) constituted a significant and substantial contribution to a mine safety hazard ("S&S" violation). Counsel for the Secretary states that no evidence is available as to the height between the exposed personnel carrier and the unguarded wire, and therefore the Secretary does not believe he will be able to prove the S&S nature of the violation -- i.e, that a serious injury was reasonably likely to have resulted from the condition.

#### CONCLUSION

After review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement. I find that approval of the suggested reduction in the penalty assessed for the subject violation is warranted and the proposed settlement disposition is reasonable and in the public interest. Pursuant to 29 C.F.R. 2700.30, the motion IS GRANTED, and the settlement is APPROVED.

#### ORDER

Respondent IS ORDERED to pay a civil penalty in the settlement amount shown above in satisfaction of the violation in question and the Secretary IS ORDERED to modify Citation No. 3108613 by deleting the S&S designation and by changing the inspector's assessment of gravity in box 10.A. to "unlikely." Payment is to be made to MSHA within thirty (30) days of the date of this proceeding and the modifications are to be made within thirty (30) days as well. In addition, the payment of the assessed civil penalties set forth in the Partial Decision and the modifications therein ordered are to be made within thirty (30) days of this proceeding. Consolidation Coal Co., supra slip op. 32. Upon receipt of payment and completion of the modifications, these proceedings are DISMISSED.

David F. Barbour  
Administrative Law Judge  
(703) 756-5232

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Distribution:

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