

CCASE:  
SOL (MSHA) V. L. M. KARNES  
DDATE:  
19930818  
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 PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. CENT 92-333-M  
Petitioner : A.C. No. 23-02000-05505-A  
 :  
v. :  
L. M. KARNES : Stockton Quarry Mine  
, Employed by :  
J. H. Shears' Sons, :  
Incorporated, :  
Respondent :

DECISION APPROVING SETTLEMENT

Before: Judge Barbour

Statement of the Proceeding

This proceeding concerns 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 three alleged violations of certain mandatory safety standards found in Part 56, Title 30, Code of Federal Regulations.

The parties now have decided to settle the matter, and the Secretary has filed a motion pursuant to Commission Rule 30, C.F.R. 2700.30, seeking approval of the proposed settlement. The citations, initial assessments, and the proposed settlement amounts are as follows:

Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3901563	10/16/91	56.6001	\$150	\$-0-
3901573A	10/17/91	56.15005	\$150	\$75
3901573B	10/17/91	56.11001	\$100	\$50

In support of the proposed settlement disposition of this case, the parties have submitted information pertaining to the six statutory civil penalty criteria found in Section 110(i) of the Act, included information regarding Respondent's size, ability to continue in business and history of previous violations.

In particular, with regard to Citation No. 3901563, Petitioner notes that the citation was issued because explosives were not being stored in a suitable magazine or a safe location.

The Petitioner states on an investigation into the facts surrounding the alleged violation has revealed: (1) Respondent

~1714

did not create the condition and was not employed at the mine when it came into existence; (2) neither Respondent nor his miners uses explosives in performing their duties at the mine; (3) Respondent took appropriate steps to bring the condition to the attention of his superiors; (4) when his superiors failed to rectify the problem, Respondent took independent steps substantially reducing the exposure of the miners to the danger posed by the condition; and (5) Respondent did not have authority to remedy the condition. The Petitioner argues given these circumstances the purposes of the Mine Act are not served by pursuing a civil penalty against Respondent and the citation should be vacated.

With respect to Order No. 3901573A and Citation No. 3901573B, which allege that Respondent was working 18 feet above ground without a safety belt and line and that safe means of access was not proved to the work area, Petitioner stated that: (1) a belt and line was not provided to Respondent, (2) Respondent made good faith efforts to abate the conditions.

Finally, Petitioner notes that Respondent is not permanently employed and is working presently on a sporadic basis.

#### CONCLUSION

After review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of this case, I find that approval of the suggested vacation of Citation No. 3901563 and the suggested reduction in the penalties assessed for the remaining subject violations are warranted and in the public interest. Pursuant to 30 C.F.R.

2700.30, the motion IS GRANTED, and the settlement is APPROVED

#### ORDER

Respondent IS ORDERED to pay civil penalties in the settlement amounts shown above in satisfaction of the violations in question, and Petitioner IS ORDERED to vacate Citation No. 3901563. Payment is to be made to MSHA within thirty (30) days of the date of this proceeding and upon receipt of payment, this proceeding is DISMISSED.

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

~1715

Distribution:

Steve Turow, Esq., Office of the Solicitor,  
U.S. Department of Labor, 4015 Wilson Boulevard, Suite 516,  
Arlington, VA 22203 (Certified Mail)

L.M. Karnes, 603 East Poplar, Fort Gibson, OK 74434  
(Certified Mail)

/epy