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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. YORK 93-115-M
Petitioner : A. C. No. 18-00010-05517
:
v. : Marriottsville Quarry
GENSTAR STONE PRODUCTS :
COMPANY, :
:
Respondent :

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

The parties have filed a motion to approve settlement of the one violation presented by the Secretary's penalty petition.

The original assessed penalty was \$8,500 and the proposed settlement is \$5,250. A citation was issued after a fatal accident at the operator's quarry. An employee attempted to pick up a sheet of steel with a hydraulic crane when the lift lines contacted a 7,600 volt overhead power line. A second employee who was handling the hook up block was killed when he tried to clamp the gripper device to the sheet of metal. The storage area where the sheeting was located was under a 7,600 volt line.

30 C.F.R. 56.12071 provides that when equipment must be operated within 10 feet of energized high voltage lines the lines shall be deenergized or other precautionary measures taken. There is apparently no dispute that a violation of the cited standard occurred. However, the settlement motion advises that not only has the operator not had an accident like this before, but on the contrary it has been the recipient of many safety awards which are detailed in the motion. The Mine Safety and Health Administration would reduce negligence from high to moderate because the victim had received extensive training covering situations like this and the crane operator had over 15 years experience in his job. The operator was unaware what these two individuals were doing since their actions took place in a remote area of the quarry.

The parties also have advised with respect to the remaining statutory criteria under section 110 of the Act. In particular, the operator is medium in size, its ability to continue in business will be unaffected by payment of the recommended penalty and the violation was abated in good faith.

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Because a fatality occurred, the closest scrutiny must be given to the parties' settlement motion, involving as it does a reduction in the penalty amount. After careful consideration, I determine there is adequate basis to accept the motion's representations regarding negligence. Under Commission precedent I find that because of the operator's training policies and procedures, negligence may be reduced from high to moderate. Southern Ohio Coal Company, 4 FMSHRC 1459, 1463-1464 (August 1982); Mar-Land Industrial Contractor, Inc., 14 FMSHRC 754, 758-759 (May 1992); Compare also the recent decision of Administrative Law Judge David Barbour in Lyman-Richey Sand & Gravel Company, 15 FMSHRC 1378, 1398-1401 (July 1993). I also take note of the operator's previously excellent safety record, but I caution the operator that this is not a circumstance which could be considered in the future as a mitigating factor in determining the appropriate amount of a penalty.

In light of the foregoing, I determine that the recommended settlement is in accordance with the provisions of the Act.

It is therefore ORDERED that the proposed settlement be and is hereby APPROVED.

It is further ORDERED that the operator PAY \$5,250 within 30 days of the date of this order.

Paul Merlin
Chief Administrative Law Judge

Distribution:

John M. Strawn, Esq., Office of the Solicitor, U. S. Department of Labor, Room 14480-Gateway Building, 3535 Market Street, Philadelphia, PA 19104 (Certified Mail)

Mark Savit, Esq., Henry Chajet, Esq., Jackson & Kelly, 2401 Pennsylvania Avenue, N.W., Suite 400, Washington, DC 20037 (Certified Mail)

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