

CCASE:
SOL (MSHA) V. LYNX COAL
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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SECRETARY OF LABOR : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 92-776
Petitioner : A.C. No. 15-16728-03511
 :
v. : No. 2 Mine
 :
LYNX COAL COMPANY, :
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 two alleged violations of certain mandatory safety standards found in Part 75, Title 30, Code of Federal Regulations. The Respondent filed a timely answer denying the alleged violations and the case was docketed for hearing on the merits in Prestonsburg, Kentucky.

The parties now have decided to settle the matter, and they have filed a motion pursuant to Commission Rule 31, 29 C.F.R. 2700.31, seeking approval of the proposed settlement. The citations, initial assessments, and the proposed settlement amounts are as follows:

Citation/Order No.	Date	30 C.F.R.	Assessment	Settlement
3818391	1/21/91	75.1722(b)	\$2500.00	\$2000.00
3813892	1/21/91	75.1728(c)	\$3000.00	\$2500.00

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. 3818391, which was issued for the failure of Lynx Coal Company to provide guards to prevent persons from coming in contact with the tail roller system

serving a low conveyor belt, the parties state that although the violation resulted in the section foreman being severely injured, there was a guard in place at the time of the accident that

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partially restricted access to the pinch point between the belt and pulleys and that the operator's negligence was tempered by the fact the foreman acted outside the scope of his duties in placing himself in the situation in which he suffered injury.

With regard to Order No. 3818392, which was issued because coal spilled beneath a conveyor belt was removed while the belt was operating and which contributed to the severe injury of the section foreman, the parties state that the operator's negligence was tempered by the fact the foremen had been instructed in the proper procedures for removing such coal and nonetheless was acting outside his training and instructions.

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 reduction in the penalties assessed for the subject violations is warranted and that the proposed settlement disposition is reasonable and in the public interest. Pursuant to 30 C.F.R.

2700.31, the motion IS GRANTED, and the settlement is APPROVED

ORDER

Respondent has paid civil penalties in the settlement amounts shown above in satisfaction of the violations in question. This proceeding is DISMISSED.

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

Distribution:

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