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SOL (MSHA) V. MAGIC COAL
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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. KENT 94-427
Petitioner : A.C. No. 15-17071-03531
v. :
 : Docket No. KENT 94-446
MAGIC COAL COMPANY, : A.C. No. 15-17071-03532
Respondent :
 : Docket No. KENT 94-447
 : A.C. No. 15-17071-03533
 :
 : Magic Mine

DECISIONS

Appearances: Brian W. Dougherty, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for the Petitioner;
William D. Donan, Esq., William R. Thomas, Esq.,
Madisonville, Kentucky, for the Respondent.

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern civil penalty proposals 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(c), seeking civil penalty assessments for eight (8), alleged violations of certain mandatory safety standards found in Parts 48, and 75, Title 30, Code of Federal Regulations. Hearings were held in Evansville, Indiana, and the parties appeared and participated fully therein. The parties informed me that they proposed to settle these matters, and their arguments in support of their proposals were made on the record.

Issues

The issues presented in these proceedings include the fact of violation, whether some of the violations were "significant and substantial", and the appropriate civil penalty assessments to be made for the violations. Additional issues raised by the parties are identified and disposed of in the course of these decisions.

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Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977; 30 U.S.C. 301 et seq.
2. Sections 110(a) and 110(i) of the Act.
3. Commission Rules, 29 C.F.R. 2700.1 et seq.

Stipulations

The parties stipulated to the following (Tr. 5-8; Joint Exhibit 1):

1. Magic Coal Company is subject to the Mine Act.
2. Magic Coal Company and its Magic Mine have an affect upon interstate commerce within the meaning of the Mine Act.
3. Magic Coal Company and its Magic Mine are subject to the jurisdiction of the Commission, and the presiding judge has the authority to hear and decide these cases.
4. Reasonable penalty assessments in these cases will not affect the respondent's ability to remain in business.

The parties further stipulated to the admissibility of an MSHA computer printout reflecting the respondent's prior history of violations for the 24 months period prior to the issuance of the citations in these proceedings (Tr. 7-8; Exhibit G-1). After the review of the information presented, I conclude and find that the respondent's prior compliance record does to warrant any additional penalty increases in these proceedings.

The parties also agreed that the respondent is a small mine operator, and the petitioner's pleadings reflect an annual coal production of 76,032 tons (Tr. 10-11).

Upon review of all of the citations and the order issued in these cases, I conclude and find that the respondent demonstrated rapid good faith compliance in abating all of the cited conditions or practices in these proceedings.

KENT 94-427

Section 104(a) "S&S" citation No. 3859223, issued on November 29, 1993, cites an alleged violation of 30 C.F.R. 75.503, and the cited condition or practice states as follows

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The 484 S&S scoop being used in the 4th South panel return air course was found to have an opening in excess of .004 inches in the main breaker (electrical) panel.

Section 104(a) non-"S&S" Citation No. 3859224, issued on November 30, 1993, cites an alleged violation of 30 C.F.R.

75.1101-23(c), and the cited condition or practice states as follows:

A violation exists in that practice fire drills have not been conducted as required. According to the record book kept at the mine, drills were last conducted 8-30-93 making it 92 days from today's date of 11-30-93. Drills are required at least once every 90 days.

Section 104(a) non-"S&S" Citation No. 3859226, issued on November 30, 1993, cites an alleged violation of 30 C.F.R.

75.807, and the cited condition or practice states as follows

The 7200 high voltage cable provided to the power center which supplies power to the continuous miner on the #1 unit (MMU #001-0) was not guarded where men are required to pass under it so as to connect couplers from trailing cables which are connected to a second power center on the #1 unit.

Petitioner's counsel presented arguments on the record in support of the proposed settlement of these citations. He stated that the respondent has agreed to pay the full amount of the proposed penalty assessments, and the respondent's counsel confirmed that this was the case and agreed to the proposed settlement of the violations.

KENT 94-446

Section 104(a) non-"S&S" citation No. 3859237, issued on December 21, 1993, cites an alleged violation of 30 C.F.R.

75.1702, and the cited condition or practice states as follows

The approved smoking program is not being followed in that a record of the search is not recorded for the 2nd shift in the record book being kept at the mine. The approved plan page 1 item 4 requires the record of the smokers search be kept. The last recorded date for this crew is 12-13-93.

Section 104(a) "S&S" Citation No. 3859238, issued on December 21, 1993, cites an alleged violation of 30 C.F.R.

75.606, and the cited condition or practice states as follows

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A violation was observed on the #1 unit in that the trailing cable of the Joy 21SC shuttle car S/N ET 12600, was not adequately protected to prevent damage by mobile equipment. The cable showed evidence of having been driven over. Tire tracks were observed over the cable and the trailing cable was recessed into the mine floor. This portion of the cable was located in the crosscut between the #4 and #5 return room, one crosscut inby the tailpiece.

Section 104(a) "S&S" Citation No. 3859239, issued on December 22, 1993, cites an alleged violation of 30 C.F.R. 75.370(a)(1), and the cited condition or practice state as follows:

The velocity of air along the 4th South panel conveyor belt at spad #550 was found to be moving at a rate of 30 feet per minute when measured using mechanical smoke. The approved plan requires no less than 50 ft. per/min. A low-level carbon monoxide detection system is utilized as an early warning fire detection system along the belt line system for this mine.

Section 104(a) "S&S" citation No. 3859240, issued on December 22, 1993, cites an alleged violation of 30 C.F.R. 75.370(a)(1), and the cited condition or practice states a follows:

When mechanical smoke was released no perceptible air movement was found along the 2nd West belt conveyor between the #46 crosscut and #47 crosscut, approx. 150 ft, inby the 2nd West head drive. The approved ventilation plan requires the air to move in an inby direction at a velocity of no less than 50 ft. per. min., or no greater than 300 ft. per. min., and have a definite and distinct movement.

Petitioner's counsel presented arguments on the record in support of the proposed settlement of these citations. He stated that the respondent has agreed to pay the full amount of the proposed penalty assessments, and the respondent's counsel confirmed that this was the case and agreed to the proposed settlement of the violations.

KENT 94-447

This case concerns a proposed civil penalty assessment of \$2,600, for an alleged violation of mandatory training standard 30 C.F.R. 48.8(a), as stated in withdrawal Order No. 3856665, issued by MSHA Inspector Robert H. Gary on October 18, 1993, pursuant to section 104(g)(1) of the Act. The order states as follows:

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The following underground miners employed at the Magic Mine have not received the requisite safety training as stipulated in Section 115 of the Act:

- 1) Sam Atkins, Last received 9-11-92.
- 2) R.C. Coakley. 8-6-92.
- 3) Steve Parks. 1-28-92.
- 4) Willoughby C. Pryor. 9-11-92.
- 5) Hubert Hunt. 1-28-92.
- 6) Tony Lowe. 8-6-92.
- 7) Lowman Barnes. 1-28-92.
- 8) Donald Daniels. 1-10-92.

These miners have not received annual refresher training at any time during the last calendar month of the miner's annual refresher training cycle. In the absence of such training these miners are declared to be a hazard to themselves and others and are to be withdrawn immediately and/or not allowed to enter the mine until they have received the required training.

The order was terminated on October 25, 1993, after the cited miners received the requisite training, and the required MSHA Forms 5000-23, were issued and reviewed by the inspector.

Petitioner's counsel stated that the parties agreed to settle this matter, and that the respondent has agreed to pay a penalty assessment of \$1,700. MSHA has agreed to modify the order from "S&S" to non-"S&S". In support of this proposal, MSHA's counsel stated that the cited miners were all experienced miners and that the evidence he developed in preparation for the trial would not support a finding of a reasonable likelihood of an injury.

The respondent's representative and mine owner, William Donan, confirmed that all of the cited miners were experienced miners who had received training under an approved State training plan, and were scheduled for retraining under that plan by the Kentucky State Bureau of Mines on the day the order was issued. Mr. Donan further stated that he was advised by the state mine inspectors that he was in compliance with state law regarding miner training and retraining.

After careful review of all of the pleadings and arguments presented by the parties in these proceedings, including the six

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statutory penalty assessment criteria found in section 110(i) of the Act, I rendered bench decisions approving the settlement dispositions pursuant to Commission Rule 31, 29 C.F.R. 2700.31. My bench decisions are herein reaffirmed, and I conclude and find that they are reasonable and in the public interest.

ORDER

In view of the foregoing, IT IS ORDERED that the following section 104(a) citations ARE AFFIRMED as issued, and the respondent IS ORDERED to pay the proposed penalty assessments in settlement and satisfaction of the violations.

Docket No. KENT 94-427

Citation No.	Date	30 C.F.R. Section	Assessment
3859223	11/29/93	75.503	\$111
3859224	11/30/93	75.1101-23(c)	\$50
3859226	11/30/93	75.807	\$50

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Citation No.	Date	30 C.F.R. Section	Assessment
3859237	12/21/93	75.1702	\$50
3859238	12/21/93	75.606	\$50
3859239	12/22/93	75.370(a)(1)	\$189
3859240	12/22/93	75.370(a)(1)	\$189

Docket No. KENT 94-447

Order No.	Date	30 C.F.R. Section	Assessment
3856665	10/18/93	48.8(a)	\$1,700

IT IS FURTHER ORDERED that section 104(g)(1) "S&S" Order No. 3856665, IS MODIFIED to a section 104(g)(1) non-"S&S" order, and as modified IT IS AFFIRMED.

The respondent shall pay the aforementioned civil penalty assessments to the petitioner (MSHA) within thirty (30) days of the date of these decisions and Order, and upon receipt by MSHA, these proceedings are dismissed.

George A. Koutras
Administrative Law Judge

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