

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

OFFICE OF ADMINISTRATIVE LAW JUDGES
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MINGO LOGAN COAL CO.,	:	CONTEST PROCEEDING
Contestant	:	
v.	:	Docket No. WEVA 93-36-R
	:	Order No. 3350011; 10/2/92
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 94-61
Petitioner	:	A.C. No. 46-06958-03565
v.	:	
	:	Mountaineer Mine
MINGO LOGAN COAL CO.,	:	
Respondent	:	

DECISION DENYING MOTION
TO APPROVE SETTLEMENT

Before: Judge Fauver

These cases involve a petition for civil penalties and a contest of a 107(a) order under 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

The parties have filed a motion for approval of a settlement agreement to vacate the 107(a) order, convert 104(d)(2) Order No. 3350012 to a 104(a) citation, vacate 104(d)(2) Order No. 3350013, vacate 104(a) Citation No. 3350014, and reduce proposed civil penalties of \$70,000 to \$10,000.

I have considered the representations and documentation submitted and conclude that the proposed settlement, with the exception of the conversion of Order No. 3350012 and reduction of penalties to \$10,000, is consistent with the criteria in 110(i) of the Act.

Order No. 3350012

The settlement motion states that on September 4, 1992, a fatal machinery accident occurred on the surface of the Mountaineer Mine, operated by Mingo Logan Coal Company. The victim, David A. White, longwall foreman, was in the process of manually collapsing longwall shields that had been set up on the surface for demonstration and training purposes. White attempted to block one of the canopies with a forklift, and then positioned himself under the canopy between the linkage bars and hydraulic

jacks. He then removed the hydraulic staple lock and pressure

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relief valve capsule from the rear canopy tilt jack. The rear of the canopy collapsed on him, crushing him to death.

On October 2, 1992, MSHA Inspector Davis issued 104(d)(2) Order No. 3350012, charging a violation of 30 C.F.R. 77.405(b) for failing to securely block the canopy that crushed Mr. White.

Inspector Davis found that this was a significant and substantial violation. He also found that the violation was due to a high degree of negligence and reflected an unwarrantable failure to comply with a mandatory safety standard. Mingo Logan abated the violation by retraining all longwall miners in safe methods for operating and handling longwall shields. A civil penalty of \$35,000 was proposed for this order.

Mingo Logan does not contest the violation. Nor does it dispute Inspector Davis' determinations that the violation significantly and substantially affected the safety of employees and that the fatality occurred as a result of this violation. However, Mingo Logan disputes Inspector Davis' determination that the violation was the result of a high degree of negligence and reflected an unwarrantable failure to comply with a mandatory safety standard. Mingo Logan asserts that the victim was a longwall foreman who had extensive experience manually collapsing longwall shields from prior employment and had also safely manually collapsed several other shields on the day of the fatality. Mingo Logan also asserts that on the day of the fatality, the victim had collapsed other shields that required additional effort before they would completely collapse, and he may have had a reasonable belief that the shield in question would not collapse completely, particularly when blocked with a forklift. Mingo Logan contends that the victim's conduct, while clearly a mistake in judgment, did not rise to the level of aggravated conduct and, therefore, did not reflect a high degree of negligence or an unwarrantable failure to comply with a mandatory safety standard.

The motion further states that counsel for the Secretary has concluded that the evidence at trial may not establish that the victim's actions reflected a high degree of negligence or an unwarrantable failure to comply with a mandatory safety standard.

The parties propose to settle this violation by converting Order No. 3350012 to a 104(a) Citation, modifying the allegation to charge moderate negligence instead of a high degree of negligence, and reducing the civil penalty from \$35,000 to \$10,000.

I find that the motion does not state facts sufficient to conclude that the attempted use of a forklift to block a longwall canopy was only ordinary negligence. The forklift did not hold, and the foreman was killed as a result of his misjudgment that it would hold. Because of the extreme safety risk involved in substituting a forklift for proper blocking devices, the facts point to gross negligence and an unwarrantable violation. Accordingly, in the absence of adequate evidence to reduce the

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charge, I deny the motion to convert Order No. 3350012 to a 104(a) citation and to reduce the penalty to \$10,000. Base upon the facts indicated, I would approve a settlement of \$20,000 for this violation without modifying the 104(d)(2) order.

ORDER

1. As presently written, the motion to approve a settlement is DENIED.

2. The parties may amend the settlement motion consistent with this decision or the cases will proceed to hearing.

William Fauver
Administrative Law Judge

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