

CCASE:

T J McKNIGHT V. SOL (MSHA)

DDATE:

19941220

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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

T. J. McKNIGHT, INC.,	:	CONTEST PROCEEDINGS
Contestant	:	
v.	:	Docket No. SE 94-51-RM
	:	Citation No. 4094591;
SECRETARY OF LABOR,	:	7/29/93
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 94-52-RM
Respondent	:	Citation No. 4094593;
	:	7/29/94
	:	
	:	Clarks Mine
	:	
	:	Mine ID 31-02009-QFX
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. SE 94-262-M
Petitioner	:	A. C. No. 31-02009-05501 QFX
v.	:	
	:	Clarks Mine
T. J. McKNIGHT, INC.,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Appearances: Leslie John Rodriguez, Esq., Office of the Solicitor, U. S. Department of Labor, Atlanta, Georgia, for the Secretary; Michael C. Lord, Esq., Maupin, Taylor, Ellis & Adams, P.A., Raleigh, North Carolina, for Contestant/Respondent.

Before: Judge Maurer

These consolidated proceedings concern two Notices of Contest filed by T. J. McKnight, Inc., pursuant to section 105(d) of the Mine Safety and Health Act of 1977, challenging the legality of two section 104(a) "S&S" citations alleging violations of the mandatory safety standards found at 30 C.F.R. 56.14100(b) and 56.7005, respectively. The civil penalty ca concerns a proposed civil penalty assessment of \$7000, for the alleged violations. Pursuant to notice, a hearing was held in Raleigh, North Carolina, on September 15-16, 1994, wherein the parties appeared and presented evidence to support their

~2476

respective positions. At the conclusion of the hearing, I scheduled November 15, 1994, as the filing date for the simultaneous submission of proposed findings of fact and conclusions of law. At the request of the Secretary, that filing date subsequently was extended to December 1, 1994.

However, in lieu of filing the requested post-hearing submissions, on December 9, 1994, the parties, pursuant to Commission Rule 31, 29 C.F.R. 2700.31, filed a joint motion to approve settlement of all matters in issue in these proceedings. The Secretary moves to vacate Citation No. 4094593, contested in Docket No. SE 94-52-RM, and to dismiss so much of the Petition for Assessment of Civil Penalty as is based thereon, on the ground that the evidence now available does not sustain the violation. The Secretary also proposes to reduce the proposed assessment for Citation No. 4094591 from \$2000 to \$500, and to reclassify the negligence factor from "low" to "no" negligence, on the grounds that the Secretary now feels the company did exercise due diligence.

I have considered the representations and documentation submitted in these cases, and I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is GRANTED, and it is ORDERED that respondent pay a penalty of \$500 within 30 days of this decision.

Roy J. Maurer  
Administrative Law Judge

Distribution:

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