

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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SECRETARY OF LABOR : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), :
Petitioner, :
v. :
SPARTAN MINING COMPANY, : Mine: Road Fork #51 Mine
LLC, :
Respondent. :

ORDER DENYING SETTLEMENT MOTION

Before: Judge Lesnick

This case is before me under section 105(d) of the Federal Mine Safety and Health Act of 1977 ("Mine Act"), 30 U.S.C. § 815(d). The Secretary has filed a motion to approve settlement. The motion states that the parties have agreed to a reduction in the penalty from \$13,448.00 to \$10,663.00. For the reasons set forth below, the Secretary's motion is DENIED.

As a preliminary matter, I note that the Secretary's motion at paragraph three highlights "maximizing" the Secretary's "prosecutorial impact" in agreeing to this settlement. Insofar as this statement, as well as other statements related to prosecutorial impact proffered by the Secretary, departs from Rule 31(b) and offers information that is superfluous to the Commission's authority to approve settlements of Mine Act disputes, see 30 U.S.C. § 820(k), the statement is stricken from the Secretary's motion pursuant to Commission Procedural Rule 1(b), 29 C.F.R. § 2700.1(b), and Rule 12(f) of the Federal Rules of Civil Procedure, Fed. Civ. P. 12(f). Under Commission Procedural Rule 31(b), a motion to approve settlement "shall include . . . facts in support of the amount of penalty agreed to in settlement," 29 C.F.R. § 2700.31(b)(1), and nothing in the Secretary's statement on "prosecutorial impact" in any way lessens the burden of the parties to show that a settlement is justified by the facts and circumstances surrounding each individual compromise. 30 U.S.C. § 820(k). The Secretary's insistence on larding settlement motions with unhelpful, extraneous language in no way changes the fact that it is the Commission that has independent "authority to assess all civil penalties provided in [the Mine] Act." 30 U.S.C. § 820(i).

This case involves two enforcement actions. The Respondent has agreed to pay the full penalty of \$7,663.00 proposed for section 104(g)(1) Order No. 9070664. Section 104(a) Citation No. 9066441 was issued for a violation of the accident reporting requirements of 30 C.F.R. § 50.10(a), and states as follows:

The operator failed to immediately contact MSHA at once without delay and within 15 minutes upon knowledge of an explosion at the route 16 #3 shaft which resulted in serious injury to a miner on 07/29/2016. The miner succumbed to his injuries six days later on 08/04/2016. According to the 911 call center recording[,] the mine dispatcher called at 12:13 p.m. informing 911 there had been an explosion and a miner was in need of immediate medical care. The mine operator did not contact the hotline until 12:36, at least 23 minutes after the call to the 911 center was made.

In a subsequent communication with the Court, the Secretary further clarified these allegations by stating that, “[a]ccording to MSHA’s accident report, the accident occurred at ‘approximately 12:00 p.m.’” Notes made by the inspector who issued the citation explain that the delay in reporting the accident to MSHA was “‘due to the stress of the situation.’” Motion at ¶ 4. In support of the settlement motion, the Secretary states:

The Respondent argues that management was not negligent and that MSHA was notified as expediently as possible. . . . Given the circumstances, the short amount of time involved, the available evidence, as well as the uncertainties of litigation, the Secretary has determined that a finding of low negligence and a corresponding penalty reduction are justified. The parties agree that a penalty of \$3,000.00 is appropriate, is supported by the reduction in the negligence finding and is consistent with 30 CFR Part 100.

Motion at ¶ 4.¹

The agreed upon penalty, however, is not consistent with the plain terms of the Mine Act. In 2006, in response to the tragic accidents at the Sago Mine and Aracoma Alma No. 1 Mine, Congress enacted the Mine Improvement and New Emergency Response Act of 2006, Pub. L. No. 109-236, 120 Stat. 493 (“MINER Act”). Section 103(j) of the Mine Act requires a mine operator to notify MSHA in the event of an accident occurring at its mine. 30 U.S.C. § 813(j). Section 5(a) of the MINER Act amended Mine Act section 103(j) such that “the notification required shall be provided by the operator within 15 minutes of the time at which the operator realizes that the death of an individual at the mine, or an injury or entrapment of an individual at the mine which has a reasonable potential to cause death, has occurred.” Section 5(b) of the MINER Act amended Mine Act section 110(a) by adding a new subsection providing that failure to meet the requirements of section 103(j) relating to the 15 minute requirement “shall be assessed a civil penalty . . . of not less than \$5,000 and not more than \$60,000.” 30 U.S.C. § 820(a)(2) (emphasis added).

¹ Although the violation set forth in Citation No. 9066441 is designated as being the result of “moderate” negligence, the Secretary’s motion does not include a request that this designation be modified to “low.”

The statutory language is unequivocal. It imposes a *minimum* penalty of \$5,000 for any violation of the 15 minute rule of section 103(j) without any reference whatsoever to mitigation based on the facts or circumstances of a particular situation. Nor does that statute advert to mitigation based on either a finding of low negligence or a “short amount of time involved.”

Here, the Citation No. 9066441 alleges that an accident occurred that injured a miner and ultimately led to the miner’s death. It also alleges that the Respondent delayed notifying MSHA beyond the 15 minute limit. Under the plain terms of the statute, which neither the Secretary nor the Court are free to disregard, the penalty for such a violation “shall be . . . not less than \$5,000.”

Having considered the representations and documentation submitted in this case, I therefore conclude that the proffered settlement lacks a sufficient legal basis.

WHEREFORE, the motion for approval of settlement is **DENIED** without prejudice.



Robert J. Lesnick
Chief Administrative Law Judge

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