

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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AUG 21 2014

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner

v.

PAY CAR MINING, INCORPORATED,
Respondent

CIVIL PENALTY PROCEEDING

Docket No. WEVA 2013-1027
A.C. No. 46-08884-323446

Mine: No. 58

DECISION

Appearances: Anthony M. Berry, Esq., U.S. Dept. of Labor, Office of the Solicitor,
Nashville, Tennessee, for Petitioner;

James F. Bowman, Bowman Industries, LLC, Midway, West Virginia, for
Respondent.

Before: Judge Bulluck

This case is before me upon a Petition for Assessment of Civil Penalty filed by the Secretary of Labor ("Secretary") on behalf of his Mine Safety and Health Administration ("MSHA") against Pay Car Mining, Incorporated ("Pay Car"), pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d). The Secretary seeks a civil penalty of \$70,000.00 for an alleged violation of section 75.370(a)(1).

A hearing on the merits was convened in Charleston, West Virginia. Prior to the presentation of Pay Car's case, the parties successfully negotiated a settlement whereby 104(d)(1) Order No. 8142339 shall remain as issued, and Pay Car shall pay a reduced civil penalty of \$14,000.00 based on legitimate disputes as to the gravity and negligence designations. The Secretary credited the testimony indicating the limited duration of the violation, that the roof bolters would not have been aware of the change in the air velocity, and that the water box located on the roof bolter lessened the likelihood of serious injury. The settlement agreement was tentatively approved on the record, pending filing of the written motion to approve settlement. Tr. 173-74. After the hearing, the parties filed a Joint Motion to Approve Settlement.

Pursuant to 29 C.F.R. § 2700.1(b) and Fed. R. Civ. P. 12(f), I strike paragraphs three and four from the Joint Motion as immaterial and impertinent to the issues legitimately before the

Commission.¹ The paragraphs incorrectly cite and interpret the case law and misrepresent the statute, regulations and Congressional intent regarding settlements under the Mine Act.

I have considered the representations and documentation submitted in the case under section 110(k) of the Act. Specifically, the Secretary has credited Respondent's contentions that the roof bolter was equipped with a water box that would have sequestered any respirable dust produced, and that the miners operating the roof bolter would have been unable to determine that a deficiency in the air existed. I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, the motion for approve of settlement is **GRANTED**, and it is **ORDERED** that Pay Car Mining, Incorporated, **PAY** a penalty of \$14,000.00 within 30 days of the date of this decision.² **ACCORDINGLY**, this case is **DISMISSED**.



Jacqueline R. Bulluck
Administrative Law Judge

Distribution:

Anthony M. Berry, Esq., United States Department of Labor, Office of the Solicitor, 211 7th Avenue North, Suite 420, Nashville, TN 37219

James F. Bowman, Representative, Bowman Industries, LLC, P.O. Box 99, Midway, WV 25878

/ss

¹ The Joint Motion to Approve Settlement reads in pertinent part:

3. In reaching this settlement, the Secretary has evaluated the value of the compromise, the likelihood of obtaining a still better settlement, the prospects of coming out better, or worse, after a full trial, and the resources that would need to be expanded in the attempt. The Secretary has determined that the public interest and the effective enforcement and deterrent purposes of the Mine Act are best served by settling the citation as indicated above.

4. Consistent with the position that the Secretary has taken before the Commission in The American Coal Company, LAKE 2011-13, the Secretary believes that the pleadings in this case and the above summary give the Commission an adequate basis for exercising its authority to review and approve the parties' settlement under section 110(k) of the Mine Act, 30 U.S.C. § 820(k).

² Payment should be sent to: Mine Safety and Health Administration, U.S. Department of Labor, Payment Office, P.O. Box 790390, St. Louis, MO 63179-0390. Please include Docket number and A.C. number.