

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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November 7, 1997

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 97-116-M
Petitioner	:	A. C. No. 34-01794-05503
v.	:	
	:	Bailey's Limestone Quarry
BAILEY'S LIMESTONE QUARRY,	:	
Respondent	:	

ORDER DENYING MOTION TO APPROVE SETTLEMENT

This case concerns a proposal for assessment of civil penalty filed pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. ' 815(d)), seeking the assessment of two alleged violations of mandatory safety standards found in Part 56, Title 30, Code of Federal Regulations.

The alleged violations arose out of the Secretary's investigation of a fatal accident that occurred on June 29, 1996, at the Respondent's limestone quarry. The Secretary alleges, in part, that a laborer was fatally injured when he was crushed between the bucket of a front end loader and the metal frame of the primary crusher's v-belt drive unit.

Citation No. 4448695 alleges a violation of section 56.14211(b) in that the loader bucket was in a raised position and was not blocked to prevent accidental lowering or provided with a load locking device. In addition, the Secretary alleges the violation was a significant and substantial contribution to a mine safety hazard (S&S violation) and the result of the operator's unwarrantable failure to comply in that a foreman was working at the site at time of the accident and should have recognized the hazard.

Citation No. 4448696 alleges a violation of section 50.10 because the accident, which occurred on June 29, was not reported to MSHA until July 9, 1996.

The Secretary specially assessed both alleged violations (30 C.F.R. ' 100.5). The violation alleged in Citation No. 4448695 was assessed at \$20,000, and the violation alleged in Citation No. 4448696 was assessed at \$2,500.

After the matters were scheduled for hearing, the parties settled the case. Accordingly, the hearing was canceled. The parties then moved for approval of the settlement. The motion states, "The parties propose the settlement of these citations by reducing the penalties to the total amount of \$3,500.00. No other changes to the citations are proposed."

The settlement motion does not indicate how the total amount is to be apportioned

between the alleged violations, something both I and the Secretary's Office of Assessment need to know. In addition, although the motion contains a contention that imposition of the originally proposed penalty will adversely affect the Respondent's ability to continue in business, it does not provide adequate support for such a finding. The motion states only, "The Respondent is a small business with substantial debt and currently has a severe cash shortage. In order to avoid the costs of further defending the citations, Respondent is willing to settle his case by paying the penalties as amended rather than asserting the defenses to the citations" (Motion To Approve Settlement Agreement 2).

A case arising under the Mine Act is primarily **C** but not entirely **C** the province of the parties. While, in general, they may try or not try a case as they choose, any settlement they reach must reflect not only their particular interests, but those of the public's as well (S. Rep. No. 95-181, 95th Cong., 1st Sess. 45, reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong. 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 633 (1978)). This latter interest is implemented by requiring the administrative law judge to approve the settlement (30 U.S.C. ' 820(k)), based upon "[f]acts in support of the penalty agreed to by the parties" (29 C.F.R. ' 2700.31(b)(3)).

As noted, this case involves a fatality and the charge that the foreman unwarrantably failed to correct a violative practice that resulted in the death. More than in a normal case, sufficient justification must be provided before the penalties can be reduced. The parties propose a reduction of approximately 84 percent in the total penalty, yet they offer no figures or supporting documents regarding the Respondent's "substantial debt" and "severe cash shortage". While the assertions in this regard may well be true, the public interest requires their confirmation.

Until the parties provide more facts to support the proposed penalty, I cannot approve the settlement.

ORDER

Accordingly, the motion to approve the settlement is **DENIED**. The parties are **ORDERED** to resubmit the motion, including supporting figures and/or documents within 15 days of the date of this Order. The resubmitted motion must indicate how to apportion the total proposed penalty. Failure to comply with this order will result in the case immediately being scheduled for hearing.

David Barbour
Administrative Law Judge

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