

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

January 6, 1998

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 93-63
Petitioner	:	A. C. No. 15-17081-03507
v.	:	
	:	Docket No. KENT 93-259
SUNNY RIDGE MINING COMPANY,	:	A. C. No. 15-17081-03511
INC.,	:	
Respondent	:	Docket No. KENT 93-863
	:	A. C. No. 15-17081-03513
	:	
	:	No. 9 Mine
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 94-453
Petitioner	:	A. C. No. 15-17081-03516 A
v.	:	
	:	No. 9 Mine
MITCH POTTER Employed by	:	
SUNNY RIDGE MINING COMPANY,	:	
INC.,	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 94-454
Petitioner	:	A. C. No. 15-17081-03517 A
v.	:	
	:	No. 9 Mine
TRACY DAMRON Employed by	:	
SUNNY RIDGE MINING COMPANY,	:	
INC.,	:	
Respondent	:	

DECISION ON REMAND

Appearances: MaryBeth Bernui, Esq., Office of the Solicitor, U. S. Department of Labor, Nashville, Tennessee, for Petitioner;
Reed D. Anderson, Esq., Harrison and Anderson, Pikeville, Kentucky, for Respondent.

Before: Judge Weisberger

These consolidated cases are before me based upon the Commission's decision in this matter, 19 FMSHRC 254 (1997), remanding the following issues:

1. the liability of Sunny Ridge Mining Company and Tracy Damron for violating 30 C.F.R. ' 77.405(b) as alleged in citation number 4020202;
2. the appropriate penalty to be assessed Tracy Damron concerning order numbers 4020210, 4020075, and 4020076; and
3. the appropriate penalty to be assessed against Mitch Potter concerning order number 4020076.¹ Pursuant to notice, a hearing was held on November 5, 1997, to resolve the issues raised by the Commission's remand. On December 15, 1997, Respondents filed a brief, and on December 18, 1997, the Secretary filed a brief on remand.

I. The violation by Respondents of 30 C.F.R. ' 77.405(b) as alleged in Citation No. 4020202.

The parties entered into an agreement, based on the evidence presented at the original hearing and the Commission's decision, 17 FMSHRC *supra*, to modify the original violation from a Section 104(d) citation assessed at \$3,000 to a Citation 104(a) significant and substantial violation of moderate negligence with a penalty of \$431. The parties also agreed to vacate the Section 110(c) violation against Damron. Considering the representations of the parties, the evidence presented at the initial hearing, and the Commission's decision, 17 FMSHRC *supra*, I conclude that the settlement is appropriate under the terms of the Federal Mine Safety and Health Act of 1977 (the Act).

II. The penalty to be assessed against Mitch Potter concerning order number 2020076.

The parties stipulated that Potter has no previous or pending 110(c) violations, and that, in light of his income and family support obligations and the effects of the penalty, he has the ability to pay a penalty of \$6,000. With regard to Potter's responsibilities and duties of the mine the record indicates that he was the president of the company, was present at the mine site on the date

¹These cases were initially remanded to Judge William Fauver who presided at the initial hearing and issued the initial decision, but were subsequently reassigned to the undersigned.

the order was issued, and was familiar with the conditions of the highwalls and the spoilbank at issue. Based on all these factors, and considering the criteria set forth in Section 110(i) of the Act, as interpreted by the Commission in its decision, 17 FMSHRC *supra*, I find that a penalty of \$6,000 is appropriate.

III. The penalty to be assessed Tracy Damron concerning order numbers 4020210, 4020075, and 4020076.

Damron was in charge of making preshift inspections, was responsible for making sure equipment was repaired, and was responsible for scheduling and job assignments of employees. Both Damron and his wife testified regarding his income and family and support obligations. Taking into account his income, and family and support obligations as testified to at the hearing, and his not having had any history of previous or pending Section 110(c) violations, and considering the other factors set forth in Section 110(i) of the Act as established at the initial hearing, I find that the following penalties are appropriate for the violations established in the following orders: 4020210 - \$300, 4020075 - \$400 and 4020076-\$500.

ORDER

It is ordered as follows:

1. The Section 110(c) Petition against Damron for a violation of Section 110(c) relating to citation number 4020202 shall be dismissed;
2. Respondent Sunny Ridge Mining shall pay a civil penalty of \$431 within 30 days of this Decision;
3. Respondent Potter shall, within 30 day of this decision, pay a civil penalty of \$6,000; and
4. Respondent Damron shall, within 90 days of this decision, pay a total civil penalty of \$1,200.

Avram Weisberger
Administrative Law Judge

Distribution:

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