

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

May 17, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE AND SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 94-1244
Petitioner : A.C. No. 15-17077-03531
: :
v. : RB #5 Mine
: :
R B COAL COMPANY, INCORPORATED, :
Respondent :

DECISION

Appearances: Joseph B. Lockett, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for the Petitioner;
Richard D. Cohelia, Safety Director, R B Coal

Before: Judge Feldman

This proceeding concerns a petition for assessment of civil penalty filed by the Secretary of Labor against the respondent corporation pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (the Act), 30 U.S.C. ' 820(a). The petition sought to impose a total civil penalty of \$17,000 for four alleged violations of the mandatory safety standards in Part 75 of the regulations, 30 C.F.R. Part 75, which were all purportedly attributable to the respondent's unwarrantable failure.

This matter was called for hearing on March 29, 1995, in London, Kentucky, at which time the respondent stipulated that it is a mine operator subject to the jurisdiction of the Act. After the Secretary had presented his direct case with respect to the first 104(d)(1) citation in issue, the parties elected to confer for the purpose of settlement. The parties reached a comprehensive settlement agreement that was presented on the record for my approval by counsel for the Secretary.

In support of the proposed settlement, the parties agree that the evidence reflects that the respondent's degree of negligence does not rise to the requisite level of aggravated or

unjustifiable conduct necessary to support the inspector's unwarrantable failure findings. Consequently, the parties settlement motion as it pertains to each of the cited violations is as follows:

1. 104(d)(1) Citation No. 4248202 is modified to a significant and substantial 104(a) citation attributable to the respondent's moderate rather than high degree of negligence. As a consequence, the special assessment is removed and the parties agree to a reduction in the proposed civil penalty from \$5,000 to \$450.

2. 104(d)(1) Order No. 4248203 is modified to a significant and substantial 104(a) citation attributable to the respondent's moderate degree of negligence thus removing the Secretary's proposed special assessment of a \$5,000 civil penalty. The respondent has agreed to pay a reduced civil penalty of \$450 in satisfaction of this modified citation.

3. 104(d)(1) Order No. 4248204 is modified to a significant and substantial 104(a) citation as a result of a reduction in the respondent's degree of negligence from high to moderate. The proposed special assessment of \$2,000 is reduced to a civil penalty of \$300.

4. 104(d)(1) Order No. 4248205 is modified to a nonsignificant and substantial 104(a) citation attributable to the respondent's moderate degree of negligence. As a result of the reduction in the degree of negligence and gravity associated with the cited violation, the parties agree that the \$5,000 special proposed assessment should be reduced to a \$50 civil penalty.

ORDER

This decision formalizes the approval of the parties' settlement motion that was granted on the record after consideration of the Secretary's presentation in support of the agreement and the applicable civil penalty criteria contained in section 110(i) of the Act, 30 U.S.C. ' 820(i). Accordingly, **IT IS ORDERED** tht the respondent pay a total civil penalty of \$1,250 in satisfaction of the four citations in issue. Payment is to be made to the Mine Safety and Health Administration within

30 days of the date of this decision. Upon timely receipt of payment, Docket No. KENT 94-1244 **IS DISMISSED**.

Jerold Feldman
Administrative Law Judge

Distribution:

Joseph B. Lockett, Esq., Office of the Solicitor, U. S.
Department of Labor, 2002 Richard Jones Road, Suite B-201,
Nashville, TN 37215 (Certified Mail)

Richard D. Cohelia, Safety Director, R B Coal Company, Inc.,
HC 61, Box 610, Pathfork, KY 40863 (Certified Mail)

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