

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, N.W., SUITE 600
WASHINGTON, D.C. 20006

February 16, 1999

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 94-957
Petitioner	:	A. C. No. 15-07986-03665
	:	
v.	:	Darby Mine
JERICOL MINING INCORPORATED,	:	
Respondent	:	

DECISION DISAPPROVING SETTLEMENT
ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977. The parties have filed a joint motion to approve settlements for the two violations in this case. A reduction in the penalties from \$5,700 to \$2,298 is proposed.

Citation No. 4249131 was issued as a 104(d)(1) citation for a violation of 30 C.F.R. ' 75.342(a)(4) because the methane monitor on a continuous mining machine was not maintained. The methane monitor would not deenergize the control circuit on the continuous miner because the monitor module was disconnected from the control circuit. The continuous miner had been operating for four hours. The inspector had also detected methane at seals deeper in the mine from where the miner was cutting coal. According to the joint motion filed by the parties, the operator's witnesses would challenge the inspector's assessment of the presence of methane. The operator would present testimony that a repairman was working on the monitor at the time the citation was issued and that parts for the repair were delivered while the inspector was on the section. In addition, the foreman was taking regular methane readings with a hand-held methane detector during the time the monitor was being repaired. Based on the operator's representations, the parties agree to reduce the penalty from \$4,200 to \$1,298 but the citation would remain as written.

Order No. 4249190 was issued as a 104(d)(2) order for a violation of 30 C.F.R. ' 75.202(a) because there were loose ribs along the haulage roadway. According to the parties, the operator would present evidence that the ribs were more stable because they could not be pulled down single-handedly but required the use of a four foot bar used to pry down slate. Based on the operator's representations, the parties agree to reduce the penalty from \$1,500 to \$1,000 but the citation would remain as written.

The motion as presented cannot be approved. The parties are reminded that the Commission and its judges bear a heavy responsibility in settlement cases pursuant to section 110(k) of the Act. 30 U.S.C. ' 820(k); See, S. Rep. No. 95-181, 95th Cong., 1st Sess. 44-45, 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 632-633 (1978). It is the judge's responsibility to determine the appropriate amount of penalty, in accordance with the six criteria set forth in section 110(i) of the Act. 30 U.S.C. ' 820(i); Sellersburg Stone Company v. Federal Mine Safety and Health Review Commission, 736 F.2d 1147 (7th Cir. 1984). A proposed reduction must be based upon consideration of these criteria.

The parties in the instant motion have merely stated their positions with respect to the violations. The motion sets forth unresolved conflicts between the parties on the evidence. Under the provisions of the Act, as set forth above, I cannot approve a settlement based upon the representation of such conflicts. I may only approve a settlement justifiable under the six criteria of section 110(i), *supra*. Accordingly, the parties must explain why the proposed penalties should be reduced in light of the six criteria. For instance, if the facts indicate a lesser degree of gravity or negligence than first thought, the parties, and most especially, the Solicitor must say so. This is especially true where as here the penalty reductions are large but the special findings remain unchanged.

In light of the foregoing, it is **ORDERED** that the motion for approval of settlement be **DENIED**.

It is further **ORDERED** that within 30 days of the date of this order the parties submit appropriate information to support their motion for settlement. Otherwise, this case will be set for further proceedings.

Paul Merlin

Chief Administrative Law Judge

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