

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

March 16, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 95-31
Petitioner : A. C. No. 15-16627-03561
v. :
: No. 2 Darby
JERICOL MINING INCORPORATED, :
Respondent :

DECISION APPROVING PARTIAL SETTLEMENTS
DECISION DISAPPROVING PARTIAL SETTLEMENTS
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 seven violations in this case. A reduction in the penalties from \$3,411 to \$2,830 is proposed.

The parties propose to settle five of the violations, Citation Nos. 4248716, 4248791, 4487200, 4487825, and 4487826 in this case for the originally assessed penalties. I have reviewed these violations in light of the six criteria and determine that these proposed settlements are appropriate.

With respect to the two remaining violations the parties propose reductions in the penalties.

Citation No. 4487169 was issued for a violation of 30 C.F.R. ' 75.202(a) because coal brows were found hanging on the corners of pillars and were not bolted or taken down. The inspector also noted that the brows had been burned to the mine roof and were difficult, if not impossible, to pull down with a slate bar. According to the joint motion filed by the parties, the operator's witnesses would challenge the significant and substantial designation by asserting rock that has been burned to the roof is not generally regarded as loose but as solid stable rock. The operator would also present testimony that the roof conditions in the area were good. Based on the operator's representations, the parties agree to reduce the penalty from \$431 to \$50.

Citation No. 4248792 was issued for a violation of 30 C.F.R. ' 75.203(a) because the method of mining had caused a pillar to be cut short of the required size for effective control of the roof and rib. The pillar measured 22 feet on the entry side and should have measured 50 feet. According to the parties, the operator would challenge the significant and substantial designation by presenting evidence that the roof conditions were very good and that roof support had been installed in accordance with the roof control plan. In addition, the operator would testify that there were no miners working in the area. Based on the operator's representations, the parties agree to reduce the penalty from \$595 to \$395.

The motion as presented for these two violations 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 the operator's positions with respect to the violations. There is no indication whether the Secretary agrees with the operator's assertions. Nowhere in the settlement motion is there any suggestion that Citation No. 4487169 designated as significant and substantial should be modified. The penalty amount of \$50 for this citation is usually reserved for only non-significant and substantial violations. Under the provisions of the Act, as set forth above, I can 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.

In light of the foregoing, it is ORDERED that the motion for approval of settlements for Citation Nos. 4248716, 4248791, 4487200, 4487825, and 4487826 be APPROVED.

It is further ORDERED that the motion for approval of settlements for Citation Nos. 4487169 and 4248792 be DENIED.

It is further ORDERED that within 30 days of the date of this order the parties submit appropriate information to support their settlement motion for Citation Nos. 4487169 and 4248792. Otherwise, this case will be set for hearing.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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