

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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October 3, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE AND SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. SE 94-92-M
Petitioner : A.C. No. 38-00626-05502
v. :
: Ridgeway Mine
FLUOR DANIEL INCORPORATED, :
Respondent :

REMAND DECISION APPROVING SETTLEMENT

Before: Judge Feldman

This case concerns a fatal accident caused by defective brakes on a forklift. My initial decision assessed a total civil penalty of \$27,500.00 for Citation No. 4094232 for a violation of 30 C.F.R. § 56.14101(a)(2) concerning a defective parking brake; and Citation No. 4094234 for a violation of 56.14100(a)(2) because of an inadequate preshift inspection of the subject forklift. 16 FMSHRC 2049 (October 1994). On July 30, 1996, the Commission reinstated my dismissal of remaining Citation No. 4094231 and remanded for disposition of the significant and substantial (S&S) issue, and, for a determination of the appropriate civil penalty to be assessed. 18 FMSHRC 1143.

Citation No. 4094231 cited a violation of the mandatory safety standard in 30 C.F.R. § 56.14101(a)(1). This mandatory standard provides, in pertinent part, that self-propelled mobile equipment must be equipped with a service brake system capable of stopping and holding the equipment with its typical load on the maximum grade it travels.

The service brake system was capable of stopping and holding the forklift when the vehicle's engine was running.¹ However, the brakes did not hold when the engine was turned off due to a

¹ An MSHA investigation revealed the forklift service brakes satisfied the requisite performance standards for moving vehicles contained in Table M-1 of section 56.14101(b).

defective accumulator.² In its decision remanding this matter, the Commission concluded the plain language of section 56.14101(a)(1) does not limit the braking requirement of the standard to moving vehicles with engines running. 18 FMSHRC at 1146.

On September 30, 1996, in response to the Commission's decision, the Secretary filed a Joint Motion to Approve Settlement. The essence of the parties' settlement agreement is that the respondent accepts the S&S designation for the cited violation in Citation No. 4094231. Consequently, the respondent has paid the \$7,000.00 civil penalty proposed by the Secretary for this citation. Thus, the total civil penalty imposed in this proceeding is \$34,500.00.

ORDER

I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. **WHEREFORE**, the motion for approval of settlement **IS GRANTED**. Upon payment of the entire \$34,500.00 civil penalty in satisfaction of the three citations in issue, **IT IS ORDERED** that this case **IS DISMISSED**.

Jerold Feldman
Administrative Law Judge

² An accumulator is a glass jar containing brake fluid that is designed to activate the brake system with the engine off. Citation No. 4094234, which was affirmed in the initial decision, was issued for an inadequate preshift examination that failed to reveal the malfunctioning accumulator.

Distribution:

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