

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 23, 1996

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 96-245-M
Petitioner	:	A. C. No. 35-03287-05513
	:	
v.	:	
R. J. TAGGART CONSTRUCTION	:	Taggart Portable
COMPANY, INCORPORATED,	:	
Respondent	:	

DECISION DISAPPROVING SETTLEMENT
ORDER TO SUBMIT INFORMATION

Before: Judge Merlin

This case is before me upon a petition for assessment of a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977. The parties have filed a joint motion to approve settlement for the one violation in this case. A reduction in the penalty from \$9,500 to \$6,000 is proposed. A fatality is involved.

Citation No. 3918001 was issued as a 104(d)(1) citation for a violation of 30 C.F.R. § 56.9200(d) because a miner, who was being trained on a front-end loader, was riding unsecured on the outside of the operator's cab. The loader backed over a large rock causing the miner to fall to the ground. He was run over by one of the loader tires and killed.

I cannot approve the settlement motion. 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).

The violation in this case is the ultimate in gravity. However, the settlement motion fails to discuss any of the facts surrounding the fatality or identify the reasons for the proposed reduction. The parties have submitted nothing more than a boilerplate motion. I cannot approve any penalty for this fatality when I do not know what happened. There is no excuse for the Solicitor to submit such a motion which accomplishes nothing except to create additional and unnecessary work for the Office of the Chief Administrative Law Judge.

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 settlement motion. Otherwise, this case will be set for hearing.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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