

CCASE:
SOL (MSHA) V. PITTSBURG AND MIDWAY COAL
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TTEXT:

September 13, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. CENT 92-142
	:	
PITTSBURG AND MIDWAY COAL	:	
MINING COMPANY	:	
	:	

BEFORE: Holen, Chairman; Backley, Doyle and Nelson, Commissioners

ORDER

BY THE COMMISSION:

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)("Mine Act"), the Secretary of Labor and Pittsburg and Midway Coal Mining Company ("P&M") have filed with the Commission a joint motion to approve settlement of this case. For the following reasons, the parties' settlement motion is granted, and this matter is dismissed.

On June 16, 1993, we granted P&M's petition for discretionary review of a decision of Administrative Law Judge Michael A. Lasher, Jr. In their motion, filed August 16, 1993, the parties explain that P&M stipulated, before the judge, that it violated 30 C.F.R. 75.302-4 by allowing exhaust air to recirculate into the intake entry through a three-inch diameter ventilation tube, but that it had contested the S&S designation. The judge concluded that the violation was S&S. 15 FMSHRC 1039, 1041-46 (May 1993) (ALJ)(published June 1993). The only issue raised by P&M on review is whether substantial evidence supports the judge's S&S finding. After further evaluation by the Secretary, he now agrees with P&M that substantial evidence of record does not support the judge's finding that P&M's violation of section 75.302-4 was S&S. The parties ask the Commission to grant their motion, vacate the S&S finding, reduce the civil penalty to \$50, and dismiss this proceeding.

Oversight of proposed settlements of contested cases is among the Commission's adjudicative responsibilities under the Mine Act (30 U.S.C.

820(k)) and is, in general, committed to the Commission's sound discretion See, e.g., Pontiki Coal Corp., 8 FMSHRC 668, 674-75 (May 1986); Medusa Cement Co., 10 FMSHRC 1913, 1914 (October 1990). We conclude that adequate reasons exist to approve the parties' settlement in this case. No reason appears on this record to warrant disapproval of the settlement.

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Therefore, upon full consideration of the motion, the settlement is approved. Citation No. 3244895 is modified to delete the significant and substantial designation and P&M is ordered to pay a civil penalty of \$50 within 30 days of the date of this decision. Our direction for review is also vacated and this proceeding is dismissed.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner