

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

JUN 30 2016

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket Nos. LAKE 2013-66
ADMINISTRATION (MSHA)	:	LAKE 2012-506
	:	LAKE 2013-251
v.	:	LAKE 2013-252
	:	LAKE 2013-307
BIG RIDGE, INC.	:	LAKE 2012-896
	:	

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, Commissioners

DECISION APPROVING SETTLEMENT

BY THE COMMISSION:

These proceedings arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”), involve Order No. 8445268 in Docket No. LAKE 2013-66, which was issued by the Department of Labor’s Mine Safety and Health Administration to Big Ridge, Inc. Big Ridge contested the order and associated civil penalty before a Commission Administrative Law Judge, who issued a decision in the case on April 16, 2014. 36 FMSHRC 999 (Apr. 2014) (ALJ).

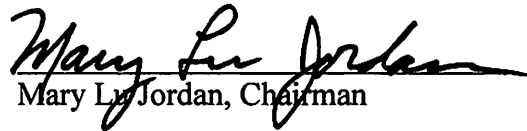
Order No. 8445268 was issued under section 104(d)(1) of the Mine Act, 30 U.S.C. § 814(d)(1), for a violation of the electrical equipment examination requirements set forth in 30 C.F.R. § 75.512. The Secretary alleged that the violation was an unwarrantable failure to comply with a mandatory standard that resulted from the operator’s high negligence, and proposed a penalty of \$25,810. The Judge removed the unwarrantable failure designation, determined that Big Ridge had acted with moderate negligence, and assessed a penalty of \$15,000 for this violation. 36 FMSHRC at 1024-25, 1046. The Secretary of Labor filed a petition for discretionary review (“PDR”), which we granted. The Secretary’s PDR sought to reverse the Judge’s changes to the unwarrantable failure and negligence designations for this order, as well as a higher penalty. Neither party sought review of the remaining citations, orders, or their associated penalties.

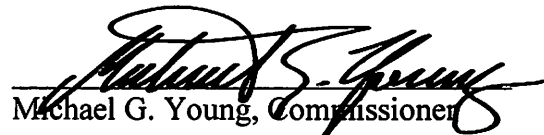
The Secretary and Big Ridge subsequently filed a joint motion requesting that the Commission approve a settlement agreement between the parties. The request for approval of settlement was filed in accordance with section 110(k) of the Mine Act, 30 U.S.C. § 820(k), which provides, in relevant part, that “[n]o proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission.” Commission Procedural Rule 31(a) provides that a “proposed

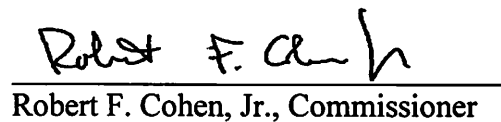
penalty that has been contested before the Commission may be settled only with the approval of the Commission upon motion.” 29 C.F.R. § 2700.31(a). The movant is required to provide “facts in support of the penalty agreed to by the parties.” 29 C.F.R. §§ 2700.31(b)(1), (c)(1).

In their joint filing, the parties seek to settle this matter for the \$15,000 penalty assessed by the Judge for Order No. 8445268. This amount is a reduction from the Secretary’s original penalty proposal of \$25,810. 36 FMSHRC at 1025. The parties have also agreed that the Secretary’s original unwarrantable failure and high negligence designations will be restored.

The parties’ joint request for approval of settlement is granted. In light of the factual justifications provided by the parties, we determine that the penalty is appropriate under the criteria set forth in section 110(i) of the Mine Act, 30 U.S.C. § 820(i). We further find that the terms of the settlement are supported by the record, in accordance with Commission case law. *See Black Beauty Coal Co.*, 34 FMSHRC 1856, 1864 (Aug. 2012), *citing Knox Ct.y Stone Co.*, 3 FMSHRC 2478, 2480 (Nov. 1981). Finally, we note that the Willow Lake Portal Mine, where the violation took place, has been permanently closed. 36 FMSHRC at 1037. Because the operator has paid the assessed penalties in full, Big Ridge owes no further payment in executing the terms of the settlement.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen, Jr., Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

Distribution:

Arthur M. Wolfson, Esq.
Jackson Kelly PLLC
Three Gateway Center, Suite 1500
401 Liberty Avenue
Pittsburgh, PA 15222

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St., South, Suite 401
Arlington, VA 22202-5450

Melanie Garris
Office of Civil Penalty Compliance
MSHA
U.S. Dept. Of Labor
201 12th Street South, Suite 401
Arlington, VA 22202-5450

Administrative Law Judge David P. Simonton
Federal Mine Safety & Health Review Commission
721 19TH Street Suite 443
Denver, CO 80202-2536