

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

APR 17 2015

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Docket Nos. LAKE 2007-171, et al.¹
ADMINISTRATION (MSHA) :
 :
v. :
 :
THE AMERICAN COAL COMPANY :

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

ORDER

BY THE COMMISSION:

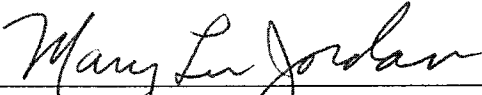
These captioned proceedings arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”), are before the Commission pursuant to the granting of The American Coal Company’s petition for discretionary review.² Subsequent to our granting of review, we stayed briefing pending further order by the Commission.

¹ The additional docket numbers at issue are set forth in the attached Appendix.

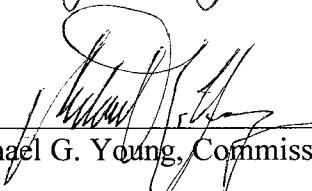
² Commissioner Cohen notes that these proceedings involve decisions approving settlement of more than 70 citations. The parties moved for approval of settlement of the citations during a conference call with the Judge. 33 FMSHRC 2574, 2593-94 (Oct. 2011) (ALJ); Unpublished Order at 2 n.1 (Oct. 2011); Unpublished Order at 2 (Nov. 2011). “The written motion [for settlement] consists of a spreadsheet setting forth the terms of the settlement reached by the parties.” Unpublished Order at 2 n.1 (Oct. 2011); *see also* Unpublished Order at 2 (Nov. 2011). That spreadsheet lists the originally proposed penalty and the agreed upon amended penalty for each citation. Overall, the penalties were reduced by 46.7%, from \$362,515 to \$193,330. The spreadsheet indicates that every one of the penalties was reduced. The only justification for the reductions noted on the spreadsheet was that one of the citations, Citation No. 6683836 in Docket No. LAKE 2009-546, was “modif[ied] to Permanently Disabling.” No justification at all was provided for the reduction of the other penalties.

The Judge’s reasons for accepting the proposed settlement do not appear in the record. Perhaps they were set forth during the conference call. Unfortunately, no transcript was made of the conference call, and so the Commission has no basis for knowing the Judge’s consideration in accepting the settlement.

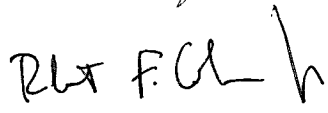
On March 31, 2015, American filed an unopposed motion to dismiss its appeal of these proceedings and represented that it has agreed to pay penalties “consistent with [Judge] Manning’s October 24, 2011 Decision Approving Settlement, October 24, 2011 Decision, and November 9, 2011 Decision Approving Settlement.” Mot. at 1. American indicated in its motion that it agreed “to amicably resolve any issues that remain regarding the safeguard-related violations in these matters.” *Id.* Upon consideration of the motion, the Commission dismisses the review of these cases and remands the proceedings to the Administrative Law Judge for further proceedings, as appropriate, with respect to “any issues that remain regarding the safeguard-related violations in these matters.” *Id.*



Mary Lu Jordan, Chairman



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner



Patrick K. Nakamura, Commissioner



William I. Althen, Commissioner

Appendix

Docket Nos.

LAKE 2007-215-R
LAKE 2007-216-R
LAKE 2007-172
LAKE 2007-202
LAKE 2007-205
LAKE 2008-004
LAKE 2008-037
LAKE 2008-080
LAKE 2008-082
LAKE 2008-120
LAKE 2008-139
LAKE 2008-140
LAKE 2008-141
LAKE 2008-143
LAKE 2008-231
LAKE 2008-232
LAKE 2008-234
LAKE 2008-235
LAKE 2008-239
LAKE 2008-526-A
LAKE 2008-528
LAKE 2008-529
LAKE 2008-531
LAKE 2008-582
LAKE 2008-583
LAKE 2008-584
LAKE 2008-585
LAKE 2008-624
LAKE 2008-625
LAKE 2008-626
LAKE 2009-007
LAKE 2009-008
LAKE 2009-206
LAKE 2009-445
LAKE 2009-546

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