

CCASE:
SOL (MSHA) V. SIMRON FUEL
DDATE:
19790405
TTEXT:

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	Civil Penalty Proceedings Docket No. HOPE 78-422-P A.O. No. 46-05018-02005V
v.	Docket No. HOPE 78-423-P A.O. No. 46-05018-02006V
SIMRON FUEL COMPANY, RESPONDENT	Lobo No. 1 Mine

DECISIONS AND ORDER APPROVING SETTLEMENT

Appearances: John H. O'Donnell, Trial Attorney, Office of the Solicitor, Department of Labor, Arlington, Virginia, for Petitioner;
Donald Lambert, Esq., Charleston, West Virginia, for Respondent.

Before: Judge Koutras

These proceedings concern petitions for assessment of civil penalty filed by the petitioner on May 19, 1978, pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, seeking in Docket No. HOPE 78-422-P, a \$4,000 civil penalty assessment for a violation of the provision of 30 CFR 75.200, cited in section 104(c)(1) Order No. 7-0007 (1 JDW), January 6, 1977, and in Docket No. HOPE 78-423-P, a \$1,500 civil penalty assessment for a violation of the provisions of 30 CFR 75.200, cited in section 104(c)(1) Notice No. 7-0002 (2 JDW), January 6, 1977. Petitioner has filed a motion seeking approval of a proposed settlement, whereby respondent has agreed to payment of a civil penalty in the amount of \$2,000 in satisfaction of the violation in Docket No. HOPE 78-422-P and \$800 in satisfaction of the violation in Docket No. HOPE 78-423-P

In support of its motion for approval of the proposed settlement, petitioner has submitted proposed findings and conclusions with respect to the statutory criteria to be considered in the assessment of a civil penalty for a violation of any mandatory safety standard, and has included a detailed analysis of the factual circumstances surrounding the alleged violations.

~143

Gravity, Negligence and Good Faith

Docket No. HOPE 78-422-P

This case involves an alleged violation of 30 CFR 75.200 in that a roof fall had occurred and had been cleaned up on the left side of the No. 2 belt conveyor, approximately 200 feet out by the tailpiece. However, no roof support had been set and the roof remained unsupported.

Petitioner asserts that the roof fall was unintentional and the respondent's personnel were in the process of cleaning it up and supporting the roof and ribs when the inspector arrived on the scene. There were still broken unsupported pieces of rock present, but petitioner maintains that such would have been cleaned up and the necessary timbering installed even if the inspector had not appeared. Thus, according to petitioner, the primary violation was in failing to post the cleanup plan in the area for cleaning up and supporting where the unplanned roof fall had occurred as the approved roof control plan requires (Govt Exh. P-3). Usually, posting of the plan consists of copying pages 11, 12 and 13 of the roof control plan (which is part of the plan concerned with unplanned roof falls) and posting it in the area--even though the miners must already be thoroughly familiar with the contents and requirements of that roof control plan. The violation was nonserious according to petitioner, but it was the result of ordinary negligence. The mine operator knew the requirements of the roof control plan, but the foreman failed to post the plan as required.

With respect to a showing of good faith on the part of respondent, an order of termination (Govt. Exh. P-5) was issued on January 7, 1977. The area had been timbered and cribbed as the inspector required, so a normal degree of good faith was demonstrated.

Docket No. HOPE 78-423-P

This case involves an alleged violation of 30 CFR 75.200 in that the roof at the entrance of all openings along the belt and mantrip haulageway were not being supported with posts in various locations from the entrance to the face area of the mine. Petitioner asserts that there had been posts installed along the haulageway, but the inspector considered certain places not adequate, so additional timbering was required. Petitioner asserts that the issue is a judgment call between the opinion of the mine operator's experts and the opinion of the inspector. The approved roof control plan in effect (Govt. Exh. No. P-8 at page 5) requires that all ribs shall be adequately supported and the inspector considers in places this was not done adequately. The personnel for the mine operator consider the supports to have been adequate. If the supports were not adequate the condition is serious, and the degree of negligence would depend on whether the inspector's opinion was supportable.

~144

With respect to a showing of good faith on the part of respondent, Government Exhibit No. P-9 indicates that additional posts were installed the following morning, which demonstrates a normal degree of good faith.

Size of business and effect of penalty assessment on respondent's ability to remain in business.

Petitioner asserts that there is a limited present market for the quality of coal produced at the Lobo No. 1 Mine, but that the respondent can make payment for civil penalties assessed for the two violations in question. Further, petitioner states that respondent's total coal production for 1976 was 386,685 tons and that the mine in question produced 14,100 tons. Thus, it would appear that respondent is a small operator and that the payment of civil penalties approved by me in this matter will not adversely affect its ability to continue in business.

Previous History of Violations

Petitioner has submitted a computer printout concerning respondent's prior history of violations for the period beginning January 1, 1970, and ending January 6, 1977. During this 7-year period, respondent has paid assessments for 23 violations, none of which were for violations of 30 CFR 75.200. I cannot conclude that this constitutes a significant prior history of violations.

In addition to its arguments concerning gravity, negligence, and good faith, petitioner relies on what it considers to be unique factual situations in support of the proposed settlement. Regarding the first alleged violation in Docket No. HOPE 78-422-P, petitioner points to the fact that the roof fall was unintentional, that the respondent was in the process of cleaning up and taking corrective action when the inspector happened on the scene, and that the crux of the violation was the fact that a cleanup plan had not been posted in the area, and that this was not a serious condition. As for the second alleged violation, petitioner obviously believes that the question of proof concerning the adequacy or inadequacy of roof supports at certain places along a haulageway which was otherwise apparently adequately supported, would depend on the credibility of the witness presented and that the matter is really one of "judgment call." Taking into account the fact that the respondent is a small operator, with an insignificant prior history of violation, petitioner believes that the proposed settlement is reasonable. I agree.

ORDER

After careful consideration of the detailed analysis submitted by the petitioner in support of its motion, particularly with respect

~145

to the question of gravity, good faith compliance, and the respondent's size and history of prior violations, I conclude that petitioner's proposed civil penalty assessments are reasonable in the circumstances presented. Accordingly, the settlement is approved and respondent IS ORDERED to pay a civil penalty in the amount of \$2,000 for Violation No. 7-0007, January 6, 1977, 30 CFR 75.200 (Docket No. HOPE 78-422-P) and \$800 for Violation No. 7-0002, January 6, 1977, 30 CFR 75.200 (Docket No. HOPE 78-423-P) within thirty (30) days of the date of this decision and order.

George A. Koutras
Administrative Law Judge