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SOL (MSHA) V. SCOTIA COAL
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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 Proceeding

Docket No. BARB 79-122-P
A/O No. 15-03746-02037V

v.

Upper Taggart Mine

SCOTIA COAL COMPANY,
RESPONDENT

DECISION AND ORDER APPROVING
SETTLEMENT OF CIVIL PENALTY PROCEEDING

On May 1, 1979, Petitioner filed a motion to approve settlement in the above-captioned proceeding. Attached to and made part of this motion were the order of assessment, the inspector's comment sheets and the Assessed Violations History Report. The 14 violations alleged in this case were originally assessed a penalty of \$94,500. The petitions for assessment of civil penalty for two of these violations were withdrawn due to the fact that no violation existed. As to the remaining 12 violation the parties proposed to settle for the sum of \$42,000. The violations and proposed penalties are as follows:

Number	Date	Assessment	Settlement
1-RDS (6-0201)	04/14/76	\$ 5,000	\$ 1,000
2-RDS (6-0202)	04/14/76	5,000	1,000
3-RDS (6-0203)	04/14/76	5,000	0
4-RDS (6-0204)	04/14/76	5,000	1,000
2-RDS (6-0224)	05/04/76	5,000	0
1-JRC (6-0271)	05/05/76	10,000	8,000
1-RDS (6-0282)	05/10/76	7,500	5,000
1-RDS (6-0295)	05/25/76	5,000	1,200
2-RDS (6-0297)	05/25/76	5,000	1,200
1-RDS (6-0298)	05/26/76	10,000	5,500
2-RDS (6-0299)	05/26/76	7,000	4,100
1-LG (6-0339)	07/30/76	5,000	1,500
1-LG (6-0364)	08/27/76	10,000	6,000
1-LG (6-0399)	10/07/76	10,000	6,500

There were eight alleged violations of 30 CFR 75.1403-6 cited in this case. In each instance, an inspector found that a vehicle used for transportation of personnel had inoperative sanding devices. Section 75.1403-6(b)(3) requires that each track-mounted self-propelled personnel carrier be equipped with properly installed and well-maintained sanding devices. Petitioner moved to withdraw two of the alleged violations from this petition. In support of this motion,

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Petitioner asserted that Order No. 3-RDS (April 14, 1976) and Order No. 2-RDS (May 4, 1976), involved vehicles which had been removed from service. The sanding devices on these vehicles would have been repaired before they were placed back in service. Accordingly, no violation of section 75.1403-6 can be found with respect to these two vehicles. The remaining six violation as as follows: Order Nos. 1-RDS (April 14, 1976), No. 2-RDS (April 14, 1976), No. 4-RDS (April 14, 1976), No. 1-RDS (May 25, 1976), No. 2-RDS (May 25, 1976), and No. 1-LG (August 30, 1976." The inspectors found that these condition should have been known to the operator because each was under the direct observation of management. In addition, a safeguard notice was issued at Upper Taggart on February 12, 1976, which noted the need for operative and well-maintained sanding devices. The Upper Taggart Mine has a record of collision between carriers resulting in injury to employees. The occurrence of the event against which the cited standard is directed was probable and the injury contemplated by the occurrence of the event was disabling. Between 18 and 36 workers most probably would have been injured if a collision were to occur. The conditions were corrected after the closure orders issued. Management took extraordinary steps to gain compliance by assigning extra men in most instances to correct the condition.

In support of the contention that the amount of the proposed assessment should be reduced with regards to these violations, counsel for Petitioner asserted the following:

It should be noted that this is a very wet mine and it is extremely difficult to keep these sanding devices operative. Each alleged violation was cited while the vehicles were on the surface and it is the Respondent's contention that the devices would have been made operative before returning underground. Respondent has paid penalties for six other violations of this standard between 1970 and the dates of these violations. The payments have ranged from \$70 to \$140. The settlements in this case range from \$1,000 to \$1,500. Increases were made for violations cited at each later date.

Four of the alleged violations contained herein cited a violation of 30 CFR 75.400. That section requires that combustible materials not be permitted to accumulate in active workings.

Order of Withdrawal No. 1-RDS (May 10, 1976), was issued after the inspector observed excessive amounts of float coal dust in the Nos. 5, 6 and 7 entries and connecting crosscuts. This condition was the result of a failure to act on the part of mine personnel and should have been known to the operator. It was improbable that the event against which section 75.400 is directed would happen because

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the coal dust was wet and the mine had no history of methane liberation. Twenty-two workers were exposed to the hazard. Management took extraordinary steps to gain compliance by assigning extra men to correct the condition.

Order of Withdrawal No. 1-RDS (May 26, 1976), was issued because an excessive amount of float coal dust and coal was present the entire length of the No. 1 outside belt and the connecting crosscuts beginning at the portal and extending a distance of 1,500 feet to the No. 2 belt drive. The condition cited resulted from the act or failure to act of mine personnel and occurred under the direct observation of management. The occurrence of the event against which section 75.400 is directed was probable. However, the mine does not have a history of methane liberation. The expected result of the occurrence of this event was disabling injury. Four miners most likely would have been injured were the event to occur. Management took extraordinary steps to gain compliance by assigning extra men to correct the condition.

Order No. 1-LG (August 27, 1976), was issued because float coal dust had been deposited on rock dusted surface along the No. 3 belt a distance of 2,000 feet and 2 to 3 tons of loose coal had accumulated at two separate places which at one time had been loading points. The condition cited had been recorded prior to the shift during which it was cited and should have been known to the operator. The occurrence of the event against which section 75.400 is directed was probable. The injuries contemplated by the occurrence of the event ranged from disabling to death. Twenty-four workers were exposed to the hazard. Management took extraordinary steps to gain compliance by assigning extra men to rock dust and clean up the accumulations.

Order No. 1-LG (October 7, 1976), was issued because float coal dust had been deposited on rock-dusted surfaces in the belt entry and crosscuts extending a distance of 2,400 feet and loose coal had accumulated at various places throughout the area. The condition should have been known to the operator. The occurrence of the event against which section 75.400 is directed was probable. Fourteen men were exposed to a hazard which might have caused disabling injury or death. The operator took extraordinary steps to gain compliance by assigning extra men to correct the condition.

In support of the reductions made in the proposed penalties for these four violations of section 75.400, counsel for Petitioner asserted the following:

Respondent has paid penalties for 75 other violations of this standard between 1970 and the dates of these alleged violations. The payments have ranged from \$75 to \$625. The settlements in this case range

from \$5,000 to \$6,500. Increases were made for violations cited at each later date. The gravity and negligence in the Proposed Assessment were too high in view of the criteria set down in Old Ben Coal Co., 8 IBMA 98 (1977).

Order No. 1-JRC (May 5, 1976), was issued because a major ventilation change was made while men were working underground. On May 4, 1976, the No. 4 entry of 1 East off 2 South was covered with loose dust and mud which was pushed from the highwall above the entry. After being cleared, the entry was blasted and again blocked. Approximately 40,000 cfm of air were being taken in through this entry. The covering of this entry was a violation of 30 CFR 75.322. The condition should have been known to the operator. It was the result of an act or failure to act on the part of management personnel. It was improbable that the event against which section 75.322 is directed would occur. Seventy five workers were exposed to the hazard. The condition was corrected after the closure order was issued.

In support of the proposed reduction in penalty for this violation, counsel for Petitioner asserted the following: "The history of previous violations reveals no other violations of this standard. This was a serious violation. The negligence was ordinary. There was an effect on mine ventilation. However, air reaching the men underground was never dangerously low."

Order No. 2-RDS (May 26, 1976), was issued because the structure on the No. 1 belt was not being maintained. Rollers were allowed to deteriorate, were stuck and were being cut by the belt in various locations. This condition was in violation of 30 CFR 75.1725. This condition resulted from the act or failure to act of mine personnel and occurred under the direct observation of management. The order was issued at the same time as Order No. 1-RDS, discussed above. It is probable that the event against which section 75.1725 is directed would occur. Thirty five workers were exposed to the hazard. This condition was corrected after the closure order was issued. Management took extraordinary steps to gain compliance by assigning extra men to correct the condition.

In support of the proposed reduction in penalty for this violation, counsel for Petitioner asserted the following: "Respondent has paid penalties for twelve other violations of this standard between 1970 and the date of this violation. The payments have ranged from \$94 to \$180. The settlement in this case was \$4,100. This was a serious violation and the negligence was ordinary."

Respondent is a large operator and there is no indication on the record that the penalties assessed herein will have an adverse affect on Respondent's ability to remain in business.

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In view of the above, Petitioner's motion is granted.

It is ORDERED that the settlement negotiated between MSHA and the Respondent is hereby APPROVED.

It is further ORDERED that Respondent pay the sum of \$42,000 within 30 days of the date of this decision.

Forrest E. Stewart
Administrative Law Judge

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THE FOLLOWING DECISION DATED APRIL 30, 1979 WAS OMITTED FROM OUR
APRIL VOLUME OF DECISIONS.