

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

27 AUG 1980

SECRETARY OF LABOR, : Civil Penalty Proceeding
MINESAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PENN 80-149
Petitioner' : A/O No. 36-00807-03037
v. :
Respondent : Renton Mine
CONSOLIDATION COAL COMPANY, :
Respondent :

DECISION

Appearances: Barbara Krause Kaufmann, Esq., David E. Street, Esq.,
Office of the Solicitor, U.S. Department of Labor,
Philadelphia, Pennsylvania, for Petitioner;
William H. Dickey, Jr., Esq., Michel Nardi, Esq.,
Consolidation Coal Company, Pittsburgh, Pennsylvania,
for Respondent.

Before: Judge Cook

On March 24, 1980, the Mine Safety and Health Administration (MSHA) filed a proposal for a penalty in the above-captioned case pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977 (Act), alleging three violations of various provisions of the Code of Federal Regulations. Consolidation Coal Company (Respondent) filed an answer on April 1, 1980.

On April 24, 1980, a notice was issued setting the hearing in this case for 9:30 a.m., Tuesday, July 23, 1980, in Washington, Pennsylvania. On May 5, 1980, Petitioner filed a motion to approve settlement and dismiss the proceeding.

Petitioner's May 5, 1980, filing states, in part, as follows:

* * * * *

3. No reduction is warranted for citations No. 622627 or 622677. However, it is appropriate for the Secretary to withdraw its petition with regard to citation No. 622573.

Citation No. 622573 was issued for a violation of 30 CFR 75.202. In this case, further investigation has disclosed that there was loose roof as described in the citation. However, it was disclosed that the crack in the roof occurred

when the inspector was there. This was not a violation of 75.202. The inspector agrees with the analysis and has agreed to vacate this citation. Thus, no penalty should be assessed.

Citation No. 622627 was issued for a violation of 30 CFR 75.503 and appropriately assessed a penalty of \$210. The operator was negligent and there were several non-permissible conditions on the shuttle car. A headlight packing gland was loose, three covers did not have lock screws or seal wires and a bolt was out of the headlight. At the time of the weekly inspection, the shuttle car was in good condition. This had occurred since that time. Thus, the operator's negligence is moderate. Also, the probability of occurrence is low as there was excellent ventilation and it is unlikely that a methane ignition could occur.

Citation No. 622677 was issued for a violation of 30 CFR 75.604 and appropriately assessed a penalty of \$255. In this case, there were three permanent splices in the trailing cable which would not exclude moisture. The outer jacket was worn off at spots and there were two splices with exposed wires. At the time this citation was issued, the shuttle car was not energized. It was under repair for different problems. Thus, the probability of occurrence at the time this citation was issued was very low. *However*, the equipment had been operated before the condition was discovered, The operator was negligent as it should have detected these conditions.

Attached is a copy of all correspondence between the Assessment Office and the Respondent. This includes the Order of Initial Review and Notice of Proposed Penalty. A computer print-out for each of the violations has been requested and will be sent to the Administrative Law Judge directly from the Assessment Office. The size of the operator's business may be found on the Proposed and Initial Assessment forms which are attached. This also includes a listing as to the annual production. To the extent the individual statutory criteria have not been discussed above, information *on* these may be found in the inspector's statements. This information was considered in recommending the proposed assessments.

On June 13, 1980, an order was issued granting the motion to approve settlement as relates to Citation Nos. 622573 and 624627, but denying the **motion** insofar as it addressed Citation No. 622677. The order stated that an order would be entered requiring Respondent to **pay the** agreed-upon settlement figure as soon as a final disposition **was reached** on the remaining citation.

On June 18, 1980, Petitioner filed a motion for partial withdrawal of the proposal for a penalty insofar as the proposal alleged that the condition described in Citation **No.** 622573 constituted a violation of **30 C.F.R. § 75.202.**

The reasons advanced in support of the requested withdrawal supplemented the reasons set forth on this matter in the May 5, 1980, motion to approve **settle-**
ment.

Petitioner's June 18, 1980, filing states, in part, as follows:

The Secretary of Labor through his attorneys, hereby moves to withdraw its petition of civil penalty [sic] as to Citation No. 622573. The remaining matters **involved** in this case are the subject of a prior settlement motion. **This 104(a)** Citation was issued for an alleged violation of 30 CFR 75.202 as the inspector believed that an area of roof was not substantially supported. Further investigation has disclosed that the Citation was issued in error. The issuing inspector concurs with this analysis and has vacated the Citation. A copy of this document is attached hereto. The roof was allegedly cracked. However, the crack occurred when the inspector was there and could not have been controlled by the operator. This is not a violation as the roof was supported according to the plan.

On July 10, 1980, Petitioner filed supplemental documentation to support the proposed settlement of Citation No. b22677, which prompted the scheduling of a telephone conference for July 14, 1980, during which the undersigned **Administrative** Law Judge and representatives of the parties participated.

The hearing commenced as scheduled on July 22, 1980, and a supplemental settlement motion was presented at the hearing as follows:

THE COURT: Now, does either of you have any report on the status of that case?

MR. STREET: Yes, sir.

I understand, your Honor, that there was a conference call last Tuesday involving the counsel of record and your Honor, where the parties to the case agreed that they would file a supplemental settlement motion with **your** Honor, and the supplemental settlement motion was to be executed by counsel for the parties and then forwarded to you, and the motion was prepared and went out of our office on, I am told, Tuesday of last week, and as to whether or not it has been received -- yes, it has been received by Mr. Mckey. That **is** why I have a copy of it.

I understand that Mr. Mckey has signed the motion and forwarded it to your Honor. Is that correct?

MISS NARDI: Yes. That is correct.

MR. STREET: Okay.

The supplemental settlement motion reads as follows:

"The Secretary of labor through his attorneys, and Consolidation Coal Company through its attorney, jointly move the Administrative Law Judge to approve settlement of the **above-**captioned matter in the amount of \$255.

"As reason for this motion, the parties state that there are issues of fact in dispute regarding whether or not the inner insulation was [intact].

"Due to these factual disputes and the coincident uncertainty of litigation results, the parties concur that settlement of this matter will further the purposes and policies of the Act.

"**Also** relevant to the settlement are all facts now on the record.

"**Respectfully** [sic] submitted," and signed by counsel.

So, your Honor, this is the action which has been taken following your conference call last week.

THE COURT: All right. I have not actually received that as yet, but when I do receive it, in view of all the prior statements that have been made, and the submittals and all of our conference calls we have had about this case, I will approve a settlement when I do receive those papers.

MR. STREET: Thank **you**.

(Tr. S-10).

Information as to the six statutory criteria contained in section 110 of the Act has been submitted. This information has provided a **full** disclosure of the nature of the settlement and the basis for the original determination. Thus, the parties have complied with the intent of the law that settlement be a matter of public record. *

The settlement reached in the above-captioned case is identified as follows:

<u>Citation No.</u>	<u>Date</u>	<u>30 C.F.R. Standard</u>	<u>Assessment</u>	<u>Settlement</u>
622573	09/28/79	75.202	\$180	Withdrawn
624627	11/29/79	75.503	210	\$210
622677	12/11/79	75.604	255	255
Totals:			\$645	\$465

The reasons given above by counsel for the parties for the proposed settlement have been reviewed in conjunction with the information submitted as to the sfx statutory criteria contained in section 110 of the Act. After according this information due consideration, it has been found to support the proposed settlement. It therefore appears that a disposition approving the settlement will adequately protect the public interest.

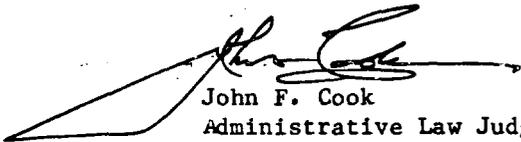
ORDER

Accordingly, IT IS ORDERED that the determination of June 13, 1980, granting petitioner's motion to approve settlement as relates to Citation Nos. 622573 and 624627 be, and hereby is, AFFIRMED.

IT IS FURTHER ORDERED that Petitioner's June 18, 1980, motion to withdraw the proposal for a penalty as relates to Citation No. 622573 be, and hereby is, GRANTED, and that the proposal for a penalty be, and hereby is, DISMISSED as relates to such citation.

IT IS FURTHER ORDERED that the settlement proposed for Citation No. 622677, as outlined above, be, and hereby is, APPROVED.

IT IS FURTHER ORDERED that Respondent, within 30 days of the date of this decision, pay the agreed-upon penalty of \$465 assessed in this proceeding.


John F. Cook
Administrative Law Judge

Distribution:

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Administrator for Metal and Nonmetal Mine Safety and Health, U.S. Department of Labor

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