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SOL (MSHA) V. CAREY SALT
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

CAREY SALT - DIVISION OF
PROCESSED MINERALS, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 84-67-M
A.C. No. 14-00412-05501

Carey Rock Salt Mine

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This proceeding concerns a civil penalty proposal filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment in the amount of \$4,000, for a violation of mandatory safety standard 30 C.F.R. 57.9-20.

The respondent filed a timely answer contesting the violation, and the case was scheduled for hearing in Wichita, Kansas, on November 27, 1984. However, by joint motion filed by the parties pursuant to Commission Rule 30, 29 C.F.R. 2700.30, they seek my approval of a proposed settlement of the case, the terms of which include an agreement by the respondent to pay a civil penalty in the amount of \$3,000, for the violation in question.

Discussion

In support of the proposed settlement disposition of this case, the parties have submitted a full discussion of the six statutory criteria found in section 110(i) of the Act. The parties state that the respondent is a small operator engaged in the operation of an underground salt mine and that the settlement amount is appropriate to the size of

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the operation and will not affect the respondent's ability to continue in business. The parties also state that the respondent has a good compliance history and abated the violation within a reasonable period of time.

The parties are in agreement that the gravity of the violation was serious, and that the violation contributed to an accident. According to the information in the pleadings filed by the petitioner, the citation was issued because four railroad cars, parked on a spur track east of the mill loading dock, were not blocked by a positive action stopblock as required by section 57.9-20. The four parked cars ran off the spur track and struck three cars near the loading dock; these three cars, in turn, moved forward and crushed an employee against the car at the loading dock, causing fatal injuries. The petitioner believes that had the cars on the spur track been securely blocked, the accident would not have occurred.

In further support of the proposed settlement, the parties assert that several mitigating circumstances dictate that the degree of negligence be modified from moderate to low. The parties state that it had been the custom and practice of respondent to park railroad cars on the spur track and to use the parking (hand) brake on the railroad cars to keep them from moving. This practice was in effect prior to MSHA inspections and was not cited. The parties also state that it is probable that some moisture accumulated around the brake shoe which froze and then thawed out, thereby contributing to the brake not holding.

Conclusion

After careful review and consideration of the pleadings, arguments, and submissions in support of the motion to approve the proposed settlement of this case, I conclude and find that the proposed settlement disposition is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the motion IS GRANTED and the settlement IS APPROVED.

ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of \$3,000, in satisfaction of the violation in question, and payment is to be made to the petitioner within thirty (30) days of the date of this decision and order. Upon receipt of payment, this case is DISMISSED.

George A. Koutras
Administrative Law Judge