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SOL (MSHA) V. ZEIGLER COAL
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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.

ZEIGLER COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. LAKE 84-106
A.C. No. 11-01845-03554

Zeigler No. 5 Mine

DECISION APPROVING SETTLEMENT

Before: Judge Kennedy

This matter is before me on the parties' motion to approve settlement of the captioned matter.

The penalties initially assessed amounted to \$130 each for (1) a permissibility violation that could have resulted in a fire or explosion and (2) an electrical maintenance violation that could have caused an electrical shock of unspecified, but obviously lethal, severity. Both violations were the result of run-of-the-mine negligence, i.e., negligence that repeatedly recurs. Despite the gravity and negligence involved, MSHA rewarded the operator with a 30% discount for prompt abatement. This resulted in a net penalty of \$91 each for the violations charged.

Based on an independent evaluation and de novo review of the circumstances, I find the discount for prompt abatement excessive and serve notice that in the future I may feel compelled to deny settlements where the formula discount is awarded without proper regard for the gravity and negligence involved in serious violations. For this case, however, I find the settlement proposed acceptable.

Accordingly, it is ORDERED that the motion be, and hereby is, GRANTED. It is FURTHER ORDERED that the operator pay the amount of the settlement agreed upon, \$182, on or before Friday, February 15, 1985, and that subject to payment the captioned matter be DISMISSED.

Joseph B. Kennedy
Administrative Law Judge