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SOL (MSHA) V. PEABODY 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

CIVIL PENALTY PROCEEDING

Docket No. KENT 85-163
A.C. No. 15-03161-03558

v.

Star North Underground

PEABODY COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding 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 civil penalty assessments in the amount of \$6,000 for two alleged violations of certain mandatory safety standards found in Part 77, Title 30, Code of Federal Regulations. The respondent contested the alleged violations and the case was docketed for a hearing on the merits. The hearing was subsequently continued after the parties advised me of a proposed settlement of the violations.

By joint motion filed with me on January 6, 1986, pursuant to Commission Rule 30, 29 C.F.R. 2700.30, the parties seek approval of a proposed settlement of the case, the terms of which require the respondent to pay civil penalties in the amount of \$4,000 for the disputed violations.

Discussion

In support of the proposed settlement, the parties state that they have discussed the alleged violations and the statutory criteria stated in section 110 of the Act. They have also submitted information concerning the civil penalty criteria and a full disclosure of the circumstances connected with the issuance of the violations.

The violations in this case were issued after an investigation of a fatal accident at the respondent's mine on January 15, 1985. According to MSHA's official accident investigation report, which is a part of the record, chief maintenance foreman James W. Warner was fatality injured when he became entangled between a belt conveyor and belt roller. According to the report, the accident victim had apparently removed a portion of the belt conveyor guard without deenergizing the belt. Citation No. 2506470, January 15, 1985, cites a violation of 30 C.F.R. 75.400(c) for a failure to adequately guard the belt conveyor drive, and Citation No. 2506471, January 15, 1985, cites a violation of 30 C.F.R. 77.404(c), for the failure of the accident victim to deenergize the power from the beltline before performing maintenance or repairs on the belt.

In support of the proposed settlement, petitioner states that the accident victim was grossly negligent in attempting to repair or perform maintenance on the belt when he removed a portion of the belt guarding and failed to deenergize the belt. Based on a review of the available evidence, including the information contained in the accident report, and citing Old Dominion Power Company, 6 FMSHRC 1886, 1895Ä96 (1984), and Nacco Mining Company, 3 FMSHRC 848 (1981), petitioner believes that this gross negligence should not be attributed to the respondent.

Petitioner asserts that the accident victim did not endanger others by his negligent acts, and there is no evidence that the respondent could have reasonably foreseen that he would act in such a manner on the date the violations occurred. Petitioner points out that the accident victim was chief maintenance foreman at the mine with over 7 years experience at his occupation, had 14 years total mining experience, and had received his annual retraining on October 26, 1984.

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 \$2,000 in satisfaction of Citation No. 2506470, and \$2,000 for Citation No. 2506471. Payment is to be made to MSHA within thirty (30) days of the date of this decision. Upon receipt of payment this matter is dismissed.

George A. Koutras
Administrative Law Judge