

CCASE:
SOL (MSHA) V. DAGS BRANCH COAL
DDATE:
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 93-994
Petitioner : A. C. No. 15-17287-03506
v. :
 : Mine: No. 1
DAGS BRANCH COAL CO. INC., :
Respondent :

DECISION

Appearances: Donna E. Sonner, Esq., Office of the Solicitor,
U. S. Department of Labor, Nashville, Tennessee
for the Petitioner;
Mark Altizer, Project Manager, Dags Coal Branch
Company, Meta, Kentucky, for the Respondent.

Before: Judge Feldman

The hearing in the above proceeding was convened on May 19,
1994, in Prestonsburg, Kentucky. The hearing concerned a
petition for civil penalty filed by the Secretary of Labor
against the corporate respondent pursuant to Section 105(d) of
the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801,
et. seq., (the Act).

This case concerns five citations with a total proposed
assessed civil penalty of \$4,782. At the commencement of the
hearing the respondent stipulated that it is a mine operator
subject to the Act. The parties also stipulated that the
respondent is a medium-sized operator that employs approximately
sixty individuals with a yearly payroll of approximately
\$2,500,000.00. During the course of presenting stipulations prior
to the beginning of the Secretary's direct case, the respondent
contended that it is in financial distress and that paying the
total proposed civil penalty would result in a severe hardship
(Tr. 18-19). Although I noted that I was not prepared to
conclude that the payment of the \$4,782 proposed penalty could
jeopardize the continuing viability of the respondent given the
size of its yearly payroll, counsel for the Secretary requested
time to confer for the purpose of settling this matter.

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After a brief conference amongst the parties, counsel for the Secretary advised me that the parties had reach a settlement. The settlement terms were that the respondent would accept the citations as written in return, the Secretary agreed to reduce the total civil penalty by thirty percent in view of the respondent's reported financial difficulties. The thirty percent reduction results in a reduced total civil penalty from \$4,782.00 to \$3,347.40. The specific reductions for each of the five citation in issue were presented on the record and are incorporated by reference. (Tr. 22).

The record was kept open for two weeks in order to receive financial information from the respondent to justify the thirty percent reduction. The respondent provided the requisite financial information to counsel for the Secretary. Counsel for the Secretary forwarded this information to me on June 6, 1994.

ORDER

In view of the above, the parties' motion to approve settlement IS GRANTED. Accordingly, it IS ORDERED that the respondent pay a total civil penalty of \$3,347.40 in satisfaction of the five citation in issue. Payment is to be made to the Mine Safety and Health Administration within 30 days of the date of this Decision. Upon timely receipt of payment, these cases ARE DISMISSED.

Jerold Feldman
Administrative Law Judge

Distribution: (Certified Mail)

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Mark G. Altizer, Dags Branch Coal Company, Inc., 123 Lower Johns Creek Road, Meta, KY 41501

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