

CCASE:
MSHA V. CENTRAL OHIO COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
June 21, 1982
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

Docket No. LAKE 81-78

CENTRAL OHIO COAL COMPANY

DECISION

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (Supp. III 1979). Pursuant to 30 U.S.C. § 823(d)(2)(B) the Commission sua sponte directed review of the following issue:

Did the judge err in approving this settlement agreement containing an exculpatory clause stating "nothing contained herein shall be deemed an admission by Respondent of a violation of the Federal Mine Safety and Health [Act] of 1977 or any regulation or standard issued thereto."

In our recent decision in Amax Lead Company of Missouri, 4 FMSHRC (Docket No. CENT 81-63-M, June 1, 1982), we held that "parties are free to admit or deny the fact of violation in settlement agreements."

Slip op. at 3. This holding controls the present case. We emphasize that, in light of the voluntary nature of the settlement process, settlements cannot be conditioned upon an admission of violation. Accordingly, the decision of the administrative law judge approving the settlement at issue is affirmed.

A. E. Lawson, Commissioner, dissenting:

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Commissioner Lawson, dissenting:

As stated in my dissent in Amax Lead Company of Missouri, supra, one cannot deny the existence of a violation and at the same time agree to the payment of a civil penalty therefor, since all penalties must be predicated upon the existence of a violation. Section 110(a); Co-op Mining Company, 2 FMSHRC 3475 (1980). Accordingly, I would reverse the decision of the administrative law judge approving the settlement in this matter.

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Distribution

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