

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

May 25, 2000

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

v.

CANTERA GREEN

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Docket No. SE 98-141-M

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

DECISION

BY THE COMMISSION:

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act” or “Act”), Administrative Law Judge Gary Melick assessed civil penalties in amounts lower than those proposed by the Secretary of Labor for a citation and orders issued to Cantera Green (“Cantera”) pursuant to section 104(d)(1) of the Mine Act, 30 U.S.C. § 814(d)(1). 21 FMSHRC 310, 315-22 (Mar. 1999) (ALJ). The Commission granted the Secretary’s petition for discretionary review challenging the judge’s penalty assessments for the violations alleged in ten orders. For the following reasons, we vacate the penalty determinations and remand for reassessment.

Our decision in this matter is one of three decisions we are issuing today regarding the Commission’s penalty assessment authority under section 110(i) of the Mine Act, 30 U.S.C. § 820(i).¹

I.

Factual and Procedural Background

On February 17, 1998, Inspector Alejandro Peña of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) conducted an inspection at the Cantera Green Mine,

¹ The other decisions concerning Commission penalty assessments we are issuing today are *Hubb Corp.*, Docket No. KENT 97-302, and *Douglas R. Rushford Trucking*, Docket No. YORK 99-39-M.

a surface aggregate mine in Quebradilla County, Puerto Rico. 21 FMSHRC at 311; Tr. 13; S. Proposal for Assessment of Civ. Penalty (Aug. 10, 1998), Ex. A. Inspector Peña issued a section 104(d)(1) citation and sixteen section 104(d)(1) orders for violations of numerous mandatory health and safety standards at the Cantera facility. 21 FMSHRC at 310; S. Exs. 1-20. He determined that each violation was the result of Cantera's unwarrantable failure to comply with the cited health or safety standard² and that eleven of the violations were significant and substantial ("S&S").³ 21 FMSHRC at 310-22; S. Exs. 1-20.

On December 8, 1998, a hearing was held in Hato Rey, Puerto Rico before Judge Melick. During the hearing, Cantera contested both the violations and proposed penalty assessments with respect to five orders and one citation and contested only the penalties with respect to the remaining eleven orders. 21 FMSHRC at 310-315; Tr. 5.

In assessing civil penalties for the violations found, the judge summarized his findings regarding four of the statutory penalty criteria⁴ in a single footnote:

In assessing civil penalties in this case I have also considered the small size of the operator (12 employees), that the violative conditions were abated in good faith, that the operator had a history of 18 violations within the previous two years and that there was an absence of evidence regarding the effect of the penalties on the operator's ability to stay in business.

² At the hearing, the Secretary deleted the unwarrantable failure designation of one violation not at issue in this proceeding. 21 FMSHRC at 310.

³ The S&S and unwarrantable failure terminology is taken from section 104(d)(1) of the Act, which distinguishes as more serious any violation that "could significantly and substantially contribute to the cause and effect of a . . . mine safety or health hazard," and establishes more severe sanctions for any violation that is caused by "an unwarrantable failure of [an] operator to comply with . . . mandatory health or safety standards." 30 U.S.C. § 814(d)(1).

⁴ Section 110(i) sets forth six criteria to be considered in the assessment of penalties under the Act:

[1] the operator's history of previous violations, [2] the appropriateness of such penalty to the size of the business of the operator charged, [3] whether the operator was negligent, [4] the effect on the operator's ability to continue in business, [5] the gravity of the violation, and [6] the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

30 U.S.C. § 820(i).

21 FMSHRC at 312 n.2. The judge considered negligence and gravity criteria separately for each of the ten violations at issue in this proceeding, determining that Cantera's negligence and gravity were high for every violation based on the facts and testimony presented at the hearing. *Id.* at 316-22. For nine of the ten violations at issue, for which the Secretary had proposed penalties ranging from \$500 to \$1,500, the judge assessed penalties of \$400. *Id.* at 316-18, 320-22. He also provided the following additional discussion in assessing penalties for the ten violations at issue in this proceeding:

Order No. 4545862 involved the failure to guard a pinch point between a conveyor belt and tail pulley in violation of 30 C.F.R. § 56.14107(a). 21 FMSHRC at 315-16. While concluding that the violation was of high gravity and the result of high operator negligence, "[i]n particular consideration of the size of the operator," the judge assessed a penalty of \$400 for this violation, rather than the \$800 penalty proposed by the Secretary. *Id.* at 316.; S. Br. at 2.

Order No. 4545863 involved the operation of a front-end loader without a functioning backup alarm in violation of 30 C.F.R. § 56.14132(a). 21 FMSHRC at 316-17. After finding high gravity and high negligence, the judge concluded that a penalty of \$400 was appropriate "[b]ecause of the size of the operator and lack of a recent history of similar violations." *Id.* at 316. The Secretary had proposed a penalty of \$1,500 for this violation. S. Br. at 2.

Order No. 4545864 charged that Cantera operated the same front-end loader without a functioning parking brake in violation of 30 C.F.R. § 56.14101(a). 21 FMSHRC at 317. Noting Cantera's claim that no similar violation had occurred in ten years, the judge explained: "Considering the size of the operator and the absence of a recent history of prior violations of this standard, I find that a civil penalty of \$400.00, is appropriate." *Id.* The Secretary had proposed a penalty of \$1,000. S. Br. at 2.

Order No. 4545865 involved Cantera's failure to perform examinations of working places on each shift as required by 30 C.F.R. § 56.18002. 21 FMSHRC at 317-18. The judge stated that, "[p]articularly in light of the absence of a recent history of similar violations and the size of the operator," a penalty of \$1,500 was appropriate. *Id.* at 318. The Secretary proposed a penalty of \$2,500 for this violation. S. Br. at 2.

Order No. 7795305 charged that the plant motor feeder at Cantera's Green Mine did not have a safe means of access as required by 30 C.F.R. § 56.11001. 21 FMSHRC at 318. The judge found high gravity and high negligence, noting there was undisputed evidence that Cantera's owner knew of this condition for two or three weeks. *Id.* Without further explanation, he concluded that a civil penalty of \$400 was warranted, rather than the \$1,000 penalty proposed by the Secretary. *Id.*; S. Br. at 2.

Order No. 7795308 charged that the fan and motor belts of the primary crusher were not guarded in accordance with 30 C.F.R. § 56.14107(a). 21 FMSHRC at 319-20. After finding that

the violation was of high gravity and the result of high negligence, the judge stated: “Considering the criteria under Section 110(i) of the Act, I find that a civil penalty of \$400.00, is appropriate.” *Id.* at 320. The Secretary had proposed a penalty of \$800 for this violation. S. Br. at 2.

Order No. 7795312 involved the lack of a cover plate for an electrical junction box in violation of 30 C.F.R. § 56.12032. 21 FMSHRC at 320. The judge stated that “[c]onsidering the criteria under Section 110(i) of the Act, an appropriate civil penalty of \$400.00 will be assessed.” *Id.* The Secretary had proposed a penalty of \$600. S. Br. at 2.

Order No. 7795313 involved a violation of 30 C.F.R. § 56.14107(a), based upon the lack of a guard for a conveyor belt tail pulley. 21 FMSHRC at 320-21. After finding high gravity and high negligence, the judge, without any further explanation, assessed a penalty of \$400; the Secretary had proposed a penalty of \$500. *Id.* at 321; S. Br. at 2.

Order No. 7795314 involved another violation of 30 C.F.R. § 56.14107(a) for failing to provide a guard for another conveyor belt tail pulley. 21 FMSHRC at 321. After finding high gravity and high negligence, the judge, without any further explanation, again assessed a penalty of \$400 for this violation, rather than the \$500 proposed by the Secretary. *Id.*; S. Br. at 2.

Order No. 7795315 charged that there was no cover plate on an electrical junction box on a conveyor motor in violation of 30 C.F.R. § 56.12032. 21 FMSHRC at 321-22. After finding that the violation posed a serious hazard and was the result of high negligence, the judge, without any additional explanation, assessed a penalty of \$400; the Secretary had proposed a penalty of \$600. *Id.*; S. Br. at 2.

The Secretary filed a petition for discretionary review challenging only the judge’s penalty assessments for these ten violations. S. PDR at 1.

II.

Disposition

The Secretary argues that the judge abused his discretion when he assessed the ten civil penalties at issue. First, the Secretary argues that when the judge assessed the civil penalties for these violations, he assessed penalties widely divergent from those proposed by the Secretary without providing an adequate explanation. S. Br. at 8, 10-12. Second, the Secretary asserts that the judge “appeared to pick and choose” which of the criteria besides gravity and negligence were relevant for the purpose of justifying his lower penalty assessment. *Id.* at 8. The Secretary asserts that while the judge made general findings on four of the criteria in a footnote, there is no indication that the judge applied those findings in determining the appropriate penalty for each of the violations. *Id.* at 13. The Secretary also submits that if, in fact, the judge did apply the findings in his footnote to each of the violations, he committed error by applying some of the statutory criteria twice. *Id.* at 13 n.4. Third, the Secretary contends that the judge erred when he

relied on the operator's lack of recent history of similar violations as opposed to the operator's entire violation history over the previous two years. *Id.* at 15. Finally, the Secretary argues that the judge assessed penalties which were inconsistent with the findings he did make since he assessed penalties in amounts lower than those proposed by the Secretary despite findings of high gravity and negligence. *Id.* at 15-17. The Secretary requests that the Commission vacate the judge's civil penalty assessments and remand the case for reassessment and further findings on the penalty criteria. *Id.* at 17.

Cantera argues that the judge's decision was correct, adequately explained, consistent with the judge's own factual findings, and also complied with the six statutory penalty criteria. C.G. Br. at 1. Cantera argues that since "neither the judge nor the Commission shall be bound by a penalty proposed by the Secretary," the judge's penalties should be considered proper and adequate. *Id.* Cantera states that it rests on the record to support its argument and requests that the Commission affirm the civil penalty assessments. *Id.* at 1-2.

A. General Legal Principles

As a general rule, Commission judges are accorded broad discretion in assessing civil penalties under the Mine Act. *Westmoreland Coal Co.*, 8 FMSHRC 491, 492 (Apr. 1986). We have held, however, that such discretion is not unbounded and must reflect proper consideration of the penalty criteria set forth in section 110(i) and the deterrent purpose of the Act. *Id.* (citing *Sellersburg Stone Co.*, 5 FMSHRC 287, 290-94 (Mar. 1983), *aff'd*, 736 F.2d 1147 (7th Cir. 1984)). In *Sellersburg*, we stated unequivocally that "[w]hen an operator contests the Secretary's proposed assessment of penalty, thereby obtaining the opportunity for a hearing before the Commission, findings of fact on the statutory penalty criteria *must* be made." *Id.* at 292 (emphasis added). In addition, our Procedural Rules also make this duty clear. Rule 30(a) provides:

In assessing a penalty the Judge *shall* determine the amount of penalty in accordance with the six statutory criteria contained in section 110(i) . . . and incorporate such determination in a written decision. The decision *shall contain findings of fact and conclusions of law on each of the statutory criteria* and an order requiring that the penalty be paid.

29 C.F.R. § 2700.30(a) (emphasis added).

Despite the Commission's clear mandate in *Sellersburg* and in its Procedural Rules, we have often found it necessary to remand cases for penalty assessment where judges have failed to enter the requisite findings. *See, e.g., Secretary of Labor on behalf of Hyles v. All American Asphalt*, 21 FMSHRC 119, 142 (Feb. 1999); *Rock of Ages Corp.*, 20 FMSHRC 106, 126 (Feb. 1998), *aff'd in part*, 170 F.3d 148 (2d Cir. 1999); *Secretary of Labor on behalf of Glover v. Consolidation Coal Co.*, 19 FMSHRC 1529, 1539 (Sept. 1997); *Fort Scott Fertilizer-Cullor*,

Inc., 19 FMSHRC 1511, 1518 (Sept. 1997); *Thunder Basin Coal Co.*, 19 FMSHRC 1495, 1502-06 (Sept. 1997). Because this case and its companion cases, *Hubb Corp.* and *Douglas R. Rushford Trucking*, present further examples of this trend, we believe it is necessary to reiterate the significance of our holding in *Sellersburg*.

As we emphasize in our decisions in *Hubb Corporation*, 22 FMSHRC ____, Docket No. KENT 97-302, slip op. at 7 (May 2000), and *Douglas R. Rushford Trucking*, 22 FMSHRC ____, Docket No. YORK 99-39-M, slip op. at 4 (May 2000), the requirement that our judges make findings of fact on each of the section 110(i) penalty criteria serves two important and distinct purposes. First, these findings provide the respondent and the regulated community with the appropriate notice as to the basis upon which the penalty is being assessed. *Sellersburg*, 5 FMSHRC at 292. Second, findings of fact on the section 110(i) penalty criteria supply the Commission and any reviewing court with the information needed to accurately determine if the penalties assessed by the judge are appropriate, excessive, or perhaps insufficient. *Id.* at 292-93. This is consistent with the broader requirement that “[a] judge must analyze and weigh the relevant testimony of record, make appropriate findings, and explain the reasons for his decision.” *Hubb*, 22 FMSHRC at ____, slip op. at 7, (quoting *Mid-Continent Resources, Inc.*, 16 FMSHRC 1218, 1222 (June 1994)). See also *Anaconda Co.*, 3 FMSHRC 299, 299-300 (Feb. 1981) (“Our function is essentially one of review. Without findings of fact and some justification for the conclusions reached by the judge, we cannot perform that function effectively.”).

As a unanimous Commission stated in *Sellersburg*:

When . . . it is determined that penalties are appropriate which substantially diverge from those originally proposed, it behooves the Commission and its judges to provide a sufficient explanation of the bases underlying the penalties assessed by the Commission. If a sufficient explanation for the divergence is not provided, the credibility of the administrative scheme providing for the increase or lowering of penalties after contest may be jeopardized by an appearance of arbitrariness.

5 FMSHRC at 293. See also *Unique Electric*, 20 FMSHRC 1119, 1123 & n.4 (Oct. 1998) (concluding that judge failed to explain the wide divergence between the penalty of \$400 assessed and the Secretary’s proposed penalties of \$8,500); *Thunder Basin*, 19 FMSHRC at 1504 (concluding that judge failed to provide adequate explanation for 95% reduction in penalty assessed); *Dolese Bros. Co.*, 16 FMSHRC 689, 695 (Apr. 1994) (finding that the judge was required to explain a 60% increase in his civil penalty assessment). While the findings and explanations relating to a penalty assessment do not have to be exhaustive, they must at least provide the Commission with a basis for determining whether the judge complied with the requirement to consider and make findings concerning the section 110(i) penalty criteria.

B. The Judge’s Penalty Assessments

Although the judge in this case did make some findings concerning the section 110(i) penalty criteria, he failed to provide an adequate explanation of how these findings contributed to his penalty assessments. The judge made brief findings and conclusions on four statutory criteria (history of violations, operator size, effect on the ability to continue in business, and good faith compliance) in a footnote and analyzed the remaining two criteria (gravity and negligence) for each violation individually. 21 FMSHRC at 312 n.2, 316-22. However, the judge failed to explain how these findings related to the penalties assessed and, for certain violations, appears to have placed particular reliance on some penalty criteria without indicating if he considered others. This lack of a clear explanation for the assessed penalties takes on additional significance because the penalties assessed for ten violations, totaling \$5,100, deviated substantially from the \$9,800 in penalties proposed by the Secretary.

The judge in this case assessed significantly lower penalties for the ten violations at issue despite concluding that the record supported a finding of high negligence and high gravity for these violations. *Id.* at 316-22. Because the Commission and its judges are required to assess penalties de novo (*Sellersburg*, 5 FMSHRC at 291), a finding that Cantera’s negligence and gravity were as great or even greater than the Secretary originally alleged does not preclude the judge from assessing lower penalties based on consideration of the other statutory criteria and the evidence adduced during the adjudicative process. As the Commission has recognized, “there is no requirement that equal weight must be assigned to each of the penalty assessment criteria.” *Thunder Basin*, 19 FMSHRC at 1503. As discussed above, however, the Commission has also consistently held that adequate “[f]indings are critical if the judge is assessing a penalty that differs significantly from that proposed by the Secretary.” *Dolase*, 16 FMSHRC at 695; *see also Sellersburg*, 5 FMSHRC at 293 (concluding that the judge failed to explain the wide divergence between the penalties assessed and the penalties proposed by the Secretary).

Here, although the judge found high gravity and negligence, the amount he assessed for the ten violations only ranged from approximately 20% to 70% of the penalties proposed by the Secretary. For six of these violations, the judge offered no explanation for this divergence outside of the footnote setting forth his general findings with respect to the four criteria.⁵ For the other

⁵ Aside from separately considering gravity and negligence, the judge stated generally with respect to two of the violations (Order Nos. 7795308, 7795312), that he was “considering the criteria under section 110(i),” and with regard to two other violations (Order Nos. 779314, 779315), that they were “affirmed as written.” 21 FMSHRC at 319-20, 321-22. For two other violations (Order Nos. 7795305, 7795313), the judge, after finding high gravity and negligence, provided no further explanation for the penalties assessed. *Id.* at 318, 321.

four orders at issue herein, the judge again referred to certain criteria which he had already discussed in the footnote.⁶ Even as to these violations, however, the judge did not explain why he considered these selected criteria to be particularly relevant to these violations, but apparently not the others, nor why they warranted significant reductions in the penalty proposed by the Secretary. Thus, while the judge technically complied with *Sellersburg* by discussing four of the criteria in an opening footnote, and the remaining two criteria (gravity and negligence) in his discussion of each separate violation, he failed to provide an adequate explanation of the basis for his penalty assessments to permit meaningful review by this Commission.

We discuss below certain additional ambiguities and deficiencies in the judge's decision with respect to particular penalty criteria⁷ and the penalty amounts assessed, that provide further grounds for vacating the judge's penalty determinations and remanding for reassessment.

1. History of Violations

As noted above, for three of the violations at issue (Order Nos. 4545863, 4545864, and 4545865), the judge relied on the operator's lack of a recent history of similar violations when he assessed penalties that were significantly less than those proposed by the Secretary. 21 FMSHRC at 317-18. The only other discussion of Cantera's history of violations was in the footnote where the judge found that "the operator had a history of 18 violations within the previous two years." *Id.* at 312 n.2.

The Commission has recognized that "the language of section 110(i) does not limit the scope of history of previous violations to similar cases." *Secretary of Labor on behalf of Johnson v. Jim Walter Resources, Inc.*, 18 FMSHRC 552, 557 (Apr. 1996). The Commission has explained that "section 110(i) requires the judge to consider the operator's general history of previous violations as a separate component when assessing a civil penalty. Past violations of *all* safety and health standards are considered for this component." *Peabody Coal Co.*, 14 FMSHRC 1258, 1264 (Aug. 1992) (emphasis added); *see also Glover*, 19 FMSHRC at 1539 (remanding to the judge with instructions to consider the operator's general history of violations, not only its prior section 105(c) violations).

The judge made a finding concerning Cantera's entire history of previous violations,

⁶ For Order Nos. 4545862, 4545863, 4545864, and 4545865, the judge relied on Cantera's small size in assessing a lower penalty than that proposed by the Secretary. 21 FMSHRC at 316-18. For three of those four orders, the judge also separately relied on the operator's lack of recent history of similar violations as justification for the reduced assessments. *Id.* at 317-18.

⁷ We conclude that the judge's analysis and findings concerning the gravity criterion with respect to the ten violations was adequate, and therefore do not further discuss his consideration of that factor.

noting that it had a history of 18 violations over the past two years. That finding, and the impact it played in the penalty assessments, is difficult to review, however, because the judge failed to evaluate whether that history was high, moderate, or low. *See Secretary of Labor on behalf of Hannah v. Consolidation Coal Co.*, 20 FMSHRC 1293, 1305 n.14 (Dec. 1998) (noting that, in the absence of a qualitative allegation, “bare” information regarding the number of previous violations is of limited use).

It was not necessarily erroneous for the judge to consider the operator’s lack of recent similar violations with respect to three violations. The Commission has found that a history of similar violations may be relevant in considering an operator’s negligence for purposes of setting a penalty. A history of similar violations may demonstrate that the operator had prior knowledge of the specific safety or health standard cited. The Commission has explained that problems in the cited area noted several times in examination books may demonstrate prior notice that a problem existed in the cited area and that greater efforts were necessary to ensure compliance. *Peabody*, 14 FMSHRC at 1262. In *Peabody*, the Commission rejected the operator’s argument that the judge improperly considered the history of violations twice — once when considering the general history criterion and a second time in consideration of the negligence criterion — explaining that such consideration was not improper or duplicative because the purpose of the two criteria are different. *Id.* at 1264.

We conclude, however, that the judge erred by failing to set forth his rationale for considering the operator’s lack of recent similar violations in certain instances, or to explain how that analysis impacted on his penalty assessments.⁸ Without such an explanation, it is not clear whether, for the three orders in which it was discussed, the judge considered similar violations to the exclusion of all violations, or whether the judge made the consideration in conjunction with his negligence finding. In addition, the judge offered no explanation for his failure to consider the history of recent similar violations for the other seven disputed penalties. Such problems in the judge’s analysis of Cantera’s history of prior violations constitute additional grounds for vacating his penalty assessments, and require further explanation and findings by the judge on remand.

2. Operator Size

Although the operator’s size was a constant factor for all violations, and was discussed briefly in a footnote, the judge appears to have relied upon the operator’s small size in lowering the penalty assessed for only four of the ten disputed penalties. The judge did not provide any explanation why the operator’s size should mitigate the penalties only for Order Nos. 4545862,

⁸ It also appears that the judge erred in determining that there was no history of a prior violation of the standard cited in Order No. 4545865. 21 FMSHRC at 318. At the hearing, the Secretary submitted a copy of a citation issued to Cantera on April 9, 1997 for a violation of the same standard. *Jt. Ex. 2*, at 7.

4545863, 4545864, and 4545865, or whether he also considered that factor in lowering the penalty assessed for the other six disputed penalties. Without an adequate explanation by the judge regarding his separate consideration of the operator's size, the Commission does not have the necessary foundation to determine whether the judge abused his discretion in his consideration of this criterion. *See Sellersburg*, 5 FMSHRC at 292-93. This ambiguity provides yet another reason for vacating the judge's penalty assessments and remanding them for further consideration and findings.

3. Negligence

The judge made findings of high negligence in his separate discussion of each of the ten violations at issue herein. 21 FMSHRC at 316-22. In addition, as discussed above, for three of the violations at issue, the judge noted the operator's lack of a recent history of similar violations in assessing penalties — a factor that the Commission has held may be relevant in evaluating an operator's negligence. However, the judge did not relate these findings regarding the lack of history of previous similar violations to his findings on negligence, or explain how they influenced the amount of the penalties assessed. This is another ambiguity in the judge's penalty assessments that warrants further consideration on remand.

4. Operator's Ability to Continue in Business

In a footnote, the judge concluded that there was “an absence of evidence regarding the effect of the penalties on the operator's ability to stay in business.” *Id.* at 312 n.2. Under Commission law, such a finding provides a basis for a presumption that the penalties proposed would not have a detrimental affect on the operator. *See Sellersburg*, 5 FMSHRC at 294. In his decision, however, the judge never confirmed that he applied this presumption or explained how this factor influenced the penalties that he assessed.

5. Good Faith in Achieving Compliance

The judge also found in a footnote, without any further explanation, that all of the violative conditions “were abated in good faith.” 21 FMSHRC at 312 n.2. While it thus appears that the judge complied with the requirement to make a finding concerning this criterion, he once again failed to explain the basis for this finding and how it influenced the amounts of the penalties he assessed.

6. Penalty Amounts

For nine of the violations at issue, the judge assessed penalties of \$400 although the Secretary had proposed penalties ranging from \$500 to \$1,500. 21 FMSHRC at 316-18, 320-22; S. Br. at 2. For the remaining violation (Order No. 4545865), involving the operator's failure to examine the working places on each shift, the judge reduced the \$2,500 penalty proposed by the

Secretary to \$1,500. 21 FMSHRC at 318; S. Br. at 2. Thus, the extent of the reduction in the penalties assessed by the judge ranged from over 70% to 20%. With the exception of a few brief references to the operator's small size and lack of recent history of similar violations, however, the judge never fully explained why greater reductions were warranted with respect to certain violations than to others. Nor did the judge offer any logic for selecting a penalty amount of \$400 for nine violations, and \$1,500 for the remaining disputed violation.

On the basis of the foregoing, we conclude that the judge failed to adequately explain the basis for the penalties he assessed for the violations at issue herein. We vacate the penalty assessments and remand with instructions to the judge to provide a reasoned explanation of the basis for the penalties assessed. *See Jim Walter Resources, Inc.*, 19 FMSHRC 498, 501 (Mar. 1997) (remanding to the judge where he failed to indicate how or whether his findings and conclusions regarding abatement related to his penalty assessments); *Dolese*, 16 FMSHRC at 695-96 (remanding to the judge where he failed to enter findings on four of the penalty criteria or explain the significant divergence of the penalty assessed from the Secretary's proposed penalty assessment). On remand, the judge must provide a clearer explanation of his basis for reducing the amount of the penalties proposed by the Secretary and his determination of particular penalty amounts for each of the violations at issue here.

III.

Conclusion

For the foregoing reasons, we vacate the penalty assessments for Order Nos. 4545862, 4545863, 4545864, 4545865, 7795305, 7795308, 779312, 7795313, 7795314, and 7795315, and remand for reassessment of an appropriate penalty for each violation consistent with this decision.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Commissioner

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