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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. VA. 82-41
A.C. No. 44-05171-03022F

v.

No. 1 Mine

BRIDGETT COAL COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Fauver

The Secretary has moved for permission to withdraw his petition for assessment of civil penalty on the ground that Respondent has paid the full amount of the proposed penalty (\$3,000).

Section 110(k) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., provides that "No proposed penalty which has been contested before the Commission under Section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission." Respondent's payment of the proposed penalty is deemed to be an offer of settlement, and not grounds for withdrawing the Secretary's petition. Accordingly, the Secretary's motion to withdraw the petition is DENIED, but deemed to be a motion to approve settlement.

This proceeding involves a Section 104(a) citation, No. 942313, alleging a violation of 30 CFR 75.200, for failure of the operator to follow the approved roof control plan by not installing cap blocks between the jacks and the mine roof, or not providing bearing plates of not less than 36 square inches. The Secretary contends the violation was serious because 2 roof bolters were killed when an undetected slip in the roof caused a roof fall. Investigation by MSHA determined that the absence of the required cap blocks or steel plates contributed to the extent of the fall, and the two fatalities. The Secretary also contends the operator was negligent since it is its responsibility to enforce the provisions of the roof control plan. There were no witnesses to the accident, and the required blocks or plates were used in other areas of the mine as required. Based upon the single penalty assessment criteria set forth in 30 CFR 100.4 MSHA proposed a penalty in the amount of \$3000.00.

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The Solicitor of Labor has been advised by MSHA that payment in full was made by the Operator, on September 30, 1983.

Counsel for the Secretary has reviewed the factual circumstances of the violation as well as all relevant criteria including company size, negligence, gravity, and good faith in abatement. Based upon this review of the facts and assessment procedures employed, the Secretary believes payment in full of the proposed penalty in the amount of \$3000.00 is reasonable, and that payment in this amount will serve to effect the intent and purposes of the Act.

I find that the proposed settlement is consistent with the criteria for assessing civil penalties in Section 110(i) of the Act and is supported by the record. Accordingly, the motion is GRANTED.

ORDER

WHEREFORE IT IS ORDERED THAT settlement by payment of the above-mentioned amount of civil penalty is APPROVED and this proceeding is DISMISSED.

William Fauver
Administrative Law Judge