CCASE:

SOL (MSHA) V. MID RESOURCES

DDATE: 19870608 TTEXT: Federal Mine Safety and Health Review Commission Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH CIVIL PENALTY PROCEEDING

ADMINISTRATION (MSHA),

Docket No. WEST 87-40 A.C. No. 05-03644-03535

PETITIONER

Coal Creek Prep Plant

MIDÄCONTINENT RESOURCES, INC.,

v.

RESPONDENT

DECISION

Appearances: James H. Barkley, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for Petitioner; Edward Mulhall, Jr., Esq., Delaney & Balcomb, Glenwood Springs, Colorado,

for Respondent.

Before: Judge Cetti

Statement of the Case

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., ("Mine Act"). The Secretary of Labor, on behalf of the Mine Safety and Health Administration, charges the operator of a coal mine with violating a safety regulation, 30 C.F.R. 48.28(a) which requires each miner to receive a minimum of 8 hours of annual refresher training as prescribed in the section.

This proceeding was initiated by the Secretary with the filing of a proposal for assessment of a civil penalty. The operator filed a timely appeal contesting the existence of the alleged violations and the amount of the proposed \$200 penalty.

Discussion

When this civil penalty proceeding was called for hearing on April 28, 1987, the parties announced upon the record that they had reached a settlement.

Counsel for the petitioner moved to amend the citation from a significant and substantial violation to a non-significant and substantial violation and to reduce the proposed civil penalty from \$200 to \$20. Respondent, in turn, moved to withdraw its notice of contest.

The motions were based on the fact that further study and investigation established that the miner in question had received annual refresher training but the MSHA form sent in by the operator was not properly filled out as to the type of training he received or possibly that he received "underground" training rather than the "surface" training he should have received. The miner had at one time been given complete underground coal training and had received annual retraining as appropriate in January each year. His entire employment with respondent had been on the "Rock Tunnel Project" and in the Coal Basin Preparation Plant.

After careful review and consideration of the pleadings, arguments, and the information placed upon the record at the hearing, I am satisfied that the proposed settlement disposition is reasonable, appropriate and in the public interest.

Accordingly, the motions made at trial are granted.

ORDER

Citation No. 2831755 is amended to allege a non-significant and substantial violation of safety regulation 30 C.F.R. 48.28(a) and, as amended the Citation is affirmed and respondent is ORDERED to pay a civil penalty of \$20 within 30 days from the date of this decision.

August F. Cetti Administrative Law Judge