

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Office of Administrative Law Judges
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November 22, 2017

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. SE 2017-236-M
Petitioner, : A.C. No. 38-00600-443931 (1BU)
v. :
:
BLANCHARD MACHINERY COMPANY, :
Respondent. : Mine: Haile Gold Mine

**ORDER DENYING SECRETARY’S MOTION FOR RECONSIDERATION
OF ORDER DISCONTINUING SIMPLIFIED PROCEEDINGS**

This case is before me upon the Petition for the Assessment of Civil Penalty filed by the Secretary of Labor (“Secretary”) pursuant to section 105 of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815. On November 1, 2017, Chief Administrative Law Judge Robert J. Lesnick notified the parties that Docket No. SE 2017-236-M had been designated for Simplified Proceedings and assigned the docket to me.

On November 13, 2017, Respondent filed a Motion to Discontinue Simplified Proceedings, stating its reasons why this case is inappropriate for Simplified Proceedings. On November 14, 2017, I issued my Order Granting Motion to Discontinue Simplified Proceedings pursuant to 29 C.F.R. § 2700.104(a) based on Respondent’s expressed need to conduct discovery in this matter. On November 14, 2017, the Secretary filed a Motion for Reconsideration stating his opposition to discontinuing Simplified Proceedings. On November 16, 2017, Respondent filed a memorandum in opposition to the Secretary’s motion for reconsideration.

The Secretary asserts that this case was properly designated for Simplified Proceedings because it does not involve fatalities, injuries, or illnesses; complex issues of law or fact; or expert witnesses. (Sec’y Mot. at 2.) In addition, this case involves two section 104(a) citations, and the proposed penalty of \$232.00 is not specially assessed. (*Id.*) The Secretary also notes that the hearing in this case would be of limited duration. (*Id.*) The Secretary states that he made the disclosures required by 29 C.F.R. § 2700.15(a) on September 5, 2017, but did not receive Respondent’s disclosures, and also denied responding to further discovery requests from Respondent. (*Id.* at 2–3.) The Secretary claims that “the parties must give the Simplified Proceedings process [time] to work before discontinuing the process” in order to reduce time and expense, and that “[n]o party should be allowed to circumvent this process.” (*Id.* at 3.)

In contrast, Respondent asserts that the violations at issue require Respondent to conduct written discovery and depositions in order to effectively present the company’s case. (Resp’t Mot. at 2.) Specifically, Respondent states that issues of law and fact must be explored through the deposition of the MSHA inspector involved. (*Id.*; Resp’t Mem. at 1–2.) Respondent alleges that the inspector did not base the violations on a thorough investigation or on the language of the standards. (Resp’t Mem. at 2.) Respondent asserts that the deficiencies in the Secretary’s

allegations compel Respondent to pursue discovery to determine what basis, if any, the Secretary has for the alleged citations. (*Id.*) Respondent also notes that it may retain and present an expert witness and anticipates filing a motion for summary decision in this matter. (Resp't Mot. at 2–3.) Respondent claims the Secretary attempts to avoid his obligation to support his allegations through normal discovery and to deny Respondent its right to due process. (Resp't Mem. at 1.)

The Commission's rules governing conventional proceedings permit broad discovery of any relevant, non-privileged matter, which may only be limited for good cause shown to prevent undue delay, oppression, burden, or expense. 29 C.F.R. § 2700.56(a)–(c). Similarly, the Federal Rules of Civil Procedure allow a party to discover “any non[-]privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case[.]” Fed. R. Civ. P. 26(b)(1).¹ Discovery serves as a key tool “to narrow and clarify the basic issues between the parties” and “for ascertaining the facts, or information as to the existence or whereabouts of facts, relative to those issues.” *Hickman v. Taylor*, 329 U.S. 495, 501 (1947). Therefore, the scope of discovery under the Federal Rules is “construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

The Commission's Procedural Rules for Simplified Proceedings recognize a basic purpose—to provide a mechanism “so that parties before the Commission may reduce the time and expense of litigation while being assured of due process and a hearing that meets the requirements of the Administrative Procedure Act.” 29 C.F.R. § 2700.100(a) (citations omitted). Such rules were promulgated primarily to assist the Commission in handling a temporary caseload increase beginning in 2006. 75 Fed. Reg. 28,223 (May 10, 2010). Cases designated for Simplified Proceedings cannot involve fatalities, injuries, or illnesses, and will generally have certain characteristics, such as involving “only citations issued under section 104(a) of the Mine Act” and not involving “complex issues of law or fact.” *Id.* § 2700.101. Yet discretion exists.

Although the Commission's Procedural Rules for Simplified Proceedings limit discovery, the Commission did not intend to deny parties access to information but rather to expedite the means for exchange through mandatory disclosure. *See* 75 Fed. Reg. 81,459, 81,461 (Dec. 28, 2010) (“Rather than requiring . . . discovery, the Commission proposed a more expeditious means for disclosure through the mandatory exchange of documents and materials”); 29 C.F.R. § 2700.105. For Simplified Proceedings to achieve its goal of streamlining litigation, “the parties must be willing participants in the process.” *Cactus Canyon Quarries of Texas, Inc.*, 35 FMSHRC 715, 717 (Mar. 2013) (ALJ).² Hence, Commission Judges may discontinue Simplified Proceedings upon motion by any party explaining why the case is inappropriate for simplified treatment.³ 29 C.F.R. § 2700.104(a)–(b).

¹ Commission Judges may look to the Federal Rules of Civil Procedure for guidance on any procedural question not governed by the Mine Act, the Commission's Procedural Rules, or the Administrative Procedure Act. 29 C.F.R. § 2700.1(b).

² Although the Commission Judges' decisions I cite herein are not binding precedent, *see* 29 C.F.R. § 2700.69(d), I find their reasoning persuasive.

³ A Judge may discontinue Simplified Proceedings *sua sponte*. 29 C.F.R. § 2700.104(a).

Here, Respondent sought to engage in discovery beyond the procedures permitted by Simplified Proceedings. Specifically, Respondent asserts that deposing MSHA's inspector is essential to the presentation of its case. Preventing a party from gathering information needed to present an effective case would not serve the purposes of Simplified Proceedings and would run counter to the goal of streamlining the issues in this matter. Indeed, when one party objects and requires more discovery than allowed under Simplified Proceedings, "the likelihood of a speedy resolution of the case is diminished to the point where adherence to the rules becomes a hindrance rather than a benefit." *Cactus Canyon*, 35 FMSHRC at 717. Furthermore, despite the Secretary's arguments, even cases that meet most of the criteria found in Procedural Rule 101 may still be deemed inappropriate for Simplified Proceedings. *See, e.g., Grand Eagle Mining, Inc.*, 33 FMSHRC 2355, 2356 (Sept. 2011) (ALJ) (denying motion to designate case for Simplified Proceedings although most of the general criteria were met). I have determined that Respondent demonstrated a reasonable need for the discovery sought. Given that the Secretary has failed to establish that such discovery would cause undue delay, oppression, burden, or expense, I see no justification to limit the operator's access to information and its right to due process. Therefore, I conclude that Simplified Proceedings are inappropriate for this case.

Based on the above, it is hereby **ORDERED** that the Secretary's Motion for Reconsideration be **DENIED**. Furthermore, my Prehearing Order issued on November 14, 2017, shall control the prehearing procedures in this proceeding. Thus, the parties' deadline for compliance with my Prehearing Order shall be **Tuesday, April 3, 2018**.



Alan G. Paez
Administrative Law Judge

Distribution: (Via Electronic Mail & U.S. Mail)

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