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MSHA V. BRADFORD COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, DC
June 5, 1985

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

Docket No. PENN 82-91

v.

BRADFORD COAL COMPANY, INC.

BEFORE: Backley, Acting Chairman; Lastowka and Nelson,
Commissioners

DIRECTION FOR REVIEW AND ORDER

BY THE COMMISSION:

Pursuant to section 113(d)(2)(B) of the Mine Act, 30 U.S.C. 823(d)(2)(B) the administrative law judge's order of dismissal issued May 23, 1985, is directed for review. The ground for review is that the judge's dismissal of this civil penalty proceeding on procedural grounds, rather than rendering a decision on the merits, is contrary to Commission policy. Id.

The hearing in this matter was held before the administrative law judge on June 15, 1982. The hearing transcript was filed on June 30, 1982. On April 22 1985, the judge issued to the Secretary of Labor an order to show cause why the proceeding should not be dismissed in light of the Secretary's failure to file post-hearing brief. The Secretary's response explained that the attorney originally assigned had resigned and that his file in this proceeding inadvertently had been closed. The Secretary stated that the evidence introduced at the hearing supported a finding of violation, that due to the passage of time h would waive his right to file a brief and that the proceeding should be decided on the merits rather than

dismissed. The administrative law judge thereafter dismissed the proceeding for want of prosecution.

We vacate the judge's order and remand for further proceedings. Bradford Coal Company is alleged to have violated the Mine Act by failing to comply with a mandatory safety standard. The case has been fully tried. The Secretary's response to the judge's show cause order explains the reason for his failure to file a brief. It is not uncommon for parties appearing before the Commission in appropriate circumstances, to waive the filing of briefs and submit cases for decision based on the record. The present case involves one alleged violation for which the Secretary sought a \$16.00 penalty. The transcript of the hearing totals 97 pages. Only two witnesses testified and no exhibits were introduced.

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In these circumstances the judge's need for further briefing by the Secretary is minimal. In these circumstances, we find that the Secretary's request to waive the filing of a brief and submit the case for a decision on the record was reasonable and should have been granted. We note that although the Secretary neglected to file a brief, the operator never protested and no further order was issued by the judge until almost three years after the hearing was held.

Accordingly, the judge's order of dismissal is vacated and the case is remanded for further proceedings including providing the operator an opportunity for argument and issuance of a decision on the merits.

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