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SOL (MSHA) V. ISLAND CREEK
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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), ON BEHALF OF ANTHONY E. HERIGES,	APPLICANT	Complaints of Discharge, Discrimination, or Interference Docket No. KENT 80-22-D CD 79-103
v.		Docket No. KENT 80-23-D CD 79-113
ISLAND CREEK COAL COMPANY,	RESPONDENT	Hamilton No. 2 Mine Morganfield, Kentucky
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), ON BEHALF OF TOM ANTONINI,	APPLICANT	Docket No. KENT 80-15-D CD 79-133 Docket No. KENT 80-14-D CD 79-97
v.		Hamilton No. 1 Mine Madisonville, Kentucky
ISLAND CREEK COAL COMPANY,	RESPONDENT	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), ON BEHALF OF JOHNNY GIBSON,	APPLICANT	Docket No. KENT 80-42-D CD 79-198
v.		No. 9 Mine
ISLAND CREEK COAL COMPANY,	RESPONDENT	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), ON BEHALF OF LARRY HALEY,	APPLICANT	Docket No. KENT 80-52-D CD 79-199
v.		

ISLAND CREEK COAL COMPANY,
RESPONDENT

No. 9 Mine

ORDER OF DISMISSAL

The Secretary filed his response to my December 20, 1979 and January 3, 1980 Orders to Show Cause why the above cases should not be dismissed in light of the Commission's decision in Secretary of Labor, Mine Safety and Health Administration (MSHA) v. The Helen Mining Co., Docket No. PITT 79-11P, 1 FMSHRC Decs. 1796 (1979), appeal docketed, No. 79-2537 (D.C. Cir. Dec. 21, 1979).

Most of the Secretary's arguments are directed to the soundness of the Commission's reasoning in Helen Mining. I have no power to disturb that decision. Thus, the Secretary must demonstrate that the facts of these cases are sufficiently distinguishable from those in Helen Mining that the latter case is not controlling. The Secretary argues that:

"Helen Mining, supra, specifically addresses the spot inspection required by 103(i) of the Act. This section requires the Secretary by his authorized representative to conduct spot inspections at irregular intervals where the mine to be inspected is found to liberate a given quantity of methane gas. Only Tom Antonini, Docket No. KENT 80-15-D, CD 79-133, is a true 103(i) inspection matter. The other cases under consideration involve spot inspection of a different nature than the type contemplated by Helen Mining, supra. Consequently, Helen Mining, supra, should not constitute precedent which would cause a dismissal of the complaints of discrimination." Secretary's Response at 10.

I do not find this argument to be convincing. In Helen Mining, the Commission stated the issue as "whether a mine operator must pay a miners' representative for the time he spends accompanying a mine inspector during a 'spot' inspection required by section 103(i) of the Federal Mine Safety and Health Act of 1977 * * *" 1 FMSHRC Dec. 1796. The Commission's analysis of the statutory language and legislative history of the Act clearly indicates that the decision was not intended to be so limited. The following statement of Congressman Perkins, made during an oral report to the House on the results of the conference committee's deliberations, was relied on by the Commission in Helen:

"* * * [I]t is the intent of the committee to require an opportunity to accompany the inspector at no loss of pay only for the regular inspections mandated by subsection (a), and not for the additional inspections otherwise required or permitted by the act. Beyond these requirements regarding no loss of pay, a representative authorized by the miners shall be entitled to accompany inspectors during any other

inspection exclusive of the responsibility for payment by the operator." 1 FMSHRC Decs at 1804 quoting Legislative History of the Federal Mine Safety and Health Act of 1977 at 1358.

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This evidence of legislative intent is equally dispositive of the issue presented here. Furthermore, after the Commission's decision in *Helen Mining*, it again relied upon Congressman Perkins' remarks in holding that a miners' representative was not entitled to walkaround pay for the time spent accompanying an inspector during a special electrical inspection. *Kentland-Elkhorn Coal Corporation v. Secretary of Labor, Mine Safety and Health Administration (MSHA), and United Mine Workers of America*, Docket No. PIKE 78-399, 1 FMSHRC Decs. 1833 (1979), appeal docketed, No. 79-2536 (D.C. Cir. Dec. 21, 1979).

ORDER

The cases are DISMISSED without prejudice.

Edwin S. Bernstein
Administrative Law Judge