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ALABAMA BY-PRODUCTS V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

ALABAMA BY-PRODUCTS
CORPORATION,

PETITIONER

v.

Contest of Citation

Docket No. SE 80-41-R

Mary Lee No. 2 Mine

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

RESPONDENT

DECISION AND ORDER GRANTING
MOTION FOR SUMMARY DECISION

On December 12, 1979, Petitioner was issued Citation No. 748714 which alleged a violation of section 103(f) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 813(f) (hereinafter the Act). That section provides that miners may accompany inspectors on mine inspections and suffer no loss of pay.(FOOTNOTE 1) On December 19, 1979, Petitioner filed a notice of contest of that citation which contended that it had not violated section 103(f) of the Act. Petitioner here moves for summary decision of its contest of citation.

Summary decision shall be granted "only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits shows: (1) that there is no issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law." 29 CFR 2700.64(b).

The facts in this case as outlined in Petitioner's affidavits are not disputed by Respondent. On November 29, 1979, 12 MSHA inspectors conducted a "blitz" inspection of Petitioner's mine. The inspection was not a "regular" inspection of the mine under section 103(a) of the Act. Miners were permitted to accompany the inspectors but were not compensated for the time they spent accompanying them.

The issue here is whether those undisputed facts constitute a violation of Section 103(f) of the Act. In *Secretary of Labor v. Helen Mining Company*, Docket No. Pitt 79-11-P (November 21, 1979) (appeal pending No. 79-2537 (D.C. Cir., Dec. 21, 1979)), the Federal Mine Safety and Health Review Commission (hereinafter Commission) held that section 103(f) requires payment to miner representatives accompanying inspectors only during "regular" inspections of mines.

The case does not involve a "regular" inspection of a mine. Pursuant to the Commission's decision in *Helen Mining*, supra, the miners therefore are not entitled to be compensated for the time they spent accompanying the inspectors. Petitioner did not violate section 103(f) of the Act and is therefore entitled to summary decision as a matter of law.

Accordingly, it is ORDERED that the motion for summary decision is GRANTED, and the citation is VACATED.

James A. Laurenson
Administrative Law Judge

~FOOTNOTE 1

"Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine made pursuant to the provisions of subsection (a), for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine. Where there is no authorized miner representative, the Secretary or his authorized representative shall consult with a reasonable number of miners concerning matters of health and safety in such mine. Such representative of miners who is also an employee of the operator shall suffer no loss of pay during the period of his participation in the inspection made under this subsection. To the extent that the Secretary or authorized representative of the Secretary determines that more than one representative from each party would further aid the inspection, he can permit each party to have an equal number of such additional representatives.

However, only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection. Compliance with this subsection shall not be a jurisdictional prerequisite to the enforcement of any provision of this Act."