

CCASE:
PRINCESS SUSAN COAL V. SOL (MSHA)
DDATE:
19800307
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

PRINCESS SUSAN COAL COMPANY,
APPLICANT

Notice of Contest

Docket No. WEVA 79-423-R

v.

Citation No. 0641203

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

Campbell's Creek Surface Mine

DECISION

Appearances: C. Lynch Christian, III, Esq., Charleston, West
Virginia, for Applicant Thomas P. Piliero,
Esq., Office of the Solicitor, U. S.
Department of Labor, for Respondent

Before: Judge Melick

On September 4, 1979, Applicant was issued Citation No.
0641203 which charged a violation of Section 103(f) of the
Federal Mine Safety and Health Act of 1977 (the Act).(FOOTNOTE 1)
That section has been interpreted by the Federal Mine Safety and
Health Review Commission to provide that miners may accompany
Federal inspectors on regular mine inspections pursuant to
Section 103(a) of the Act, and suffer no loss of pay.(FOOTNOTE 2)

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On September 19, 1979, Applicant filed an Application for Review contending therein that it had not violated Section 103(f) and thereafter moved for summary decision.

Pursuant to the Commission's Rules of Procedure, summary decision can be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that there is no issue as to any material fact and 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 alleged by Applicant are not disputed. On August 7, 9, 10, 13, 14, 15, and 16, 1979, a Federal mine inspector conducted a "free silica technical investigation" at Campbell's Creek Surface Mine. The inspector was accompanied by Mr. Thomas Morris, a representative of the miners. Morris was not compensated for the time he spent accompanying the inspector. Applicant asserts that Morris was not entitled to compensation since the "free silica technical investigation" was not a regular inspection.

I accept Applicant's unchallenged representations, and considering the undisputed assertion of fact regarding the nature of the inspection, I conclude that the "free silica technical investigation" at issue was not a regular inspection, and that therefore, as a matter of law, Applicant did not violate Section 103(f) of the Act.

Accordingly, the Motion for Summary Decision is GRANTED, and the citation is VACATED.

Gary Melick
Administrative Law Judge

~FOOTNOTE 1

Section 103(f) states in part:

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 [103](a)...[O]ne 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. 30 U.S.C. 813(f).

~FOOTNOTE 2

In Kentland-Elkhorn Coal Corp., PIKE 78-399, 1 FMSHRC Decisions 1833 (November 30, 1979) appeal pending No. 79-2536 (D.C. Cir., December 21, 1979), the Federal Mine Safety and Health Review Commission interpreted the Section 103(f) walkaround pay provision to apply to Section 103(a) "regular" inspections only. In reaching its decision, the Commission in Kentland-Elkhorn relied on its reasoning in Helen Mining Co.,

PITT 79-11-P, 1 FMSHRC Decisions 1796 (November 21, 1979) appeal pending No. 79-2537 (D.C. Cir., December 21, 1979). In Helen Mining Co., the Commission held that a miner was not entitled under Section 103(f) to walkaround pay for spot inspections pursuant to Section 103(i) of the Act and noted that compensation was due only for a miner's accompaniment of a Federal inspector during a Section 103(a) "regular" inspection. In Helen Mining Co., the Commission referred to "regular" inspections as those described in the third sentence of Section 103(a) of the Act, i.e., the four required annual inspections of underground mines and the two required annual inspections of surface mines.