

CCASE:
SOL (MSHA) V. ISLAND CREEK COAL
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TTEXT:

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

SECRETARY OF LABOR,
ON BEHALF OF WILLIAM F.
HAMRICK & JOHN L. MEADOWS,
APPLICANTS

Complaints of Discharge,
Discrimination, or
Interference

Docket No. WEVA 80-48-D

v.

CD 79-183

ISLAND CREEK COAL COMPANY,
RESPONDENT

Birch No. 2-A Mine

ORDER OF DISMISSAL

The Secretary's October 12, 1979 Complaint alleged that in failing to pay Respondent's employees, William F. Hamrick and John L. Meadows, for one day that each spent accompanying MSHA inspectors during respirable dust inspections, Respondent discriminated against these employees in violation of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977 (the Act). Respondent's Answer, filed on December 20, 1979, denied these allegations.

In my January 15, 1980 Order to Show Cause, I indicated my understanding that the Commission's decision in Secretary of Labor, Mine Safety and Health Administration v. The Helen Mining Company, Docket No. PITT 79-11-P, mandates dismissal of this case. Accordingly, I directed Applicants to show cause why this case should not be dismissed.

Applicants' January 21, 1980 Response opposed dismissal. Applicants argued that the decision in Helen Mining was incorrect, was appealed to the United States Court of Appeals for the District of Columbia Circuit, and that "these proceedings should be stayed or held in abeyance because failure to stay these proceedings will result in (1) irreparable harm to the Applicants, (2) irreparable harm to the public interest, (3) no harm to Respondent and because there is a strong likelihood of success on the part of the Secretary of Labor."

Applicants have failed to dissuade me of the view that this matter should be dismissed without prejudice. This matter comes fully within the scope of the Commission's decision in Helen Mining which, along with all other Commission decisions, is binding on me. I am not persuaded that a dismissal of this case will result in irreparable harm either to Applicants or to the "public interest." This case involves a relatively small monetary claim based upon one day's pay for each of two miners. Irreparable harm presupposes the absence of an available remedy either administrative or judicial. *Sink v. Morton*, 529 F.2d 601, 604 (4th Cir. 1975). The Random House College Dictionary (1973 ed.) defines irreparable as "incapable of being rectified, remedied or made good."

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In addition, it is not within my province to "handicap" the prospects of successful appeals of Commission decisions. It is true that two highly respected Commission members dissented in Helen Mining; however, three other highly respected Commission members, including the Chairman, formed a majority.

Finally, even successful appeals are time-consuming. In general, I am opposed to retaining cases in an inactive status on this office's dockets while a higher authority decides similar cases. A preferable solution is to dismiss the case without prejudice to reinstitution at such time as may be appropriate.

ORDER

This case is DISMISSED WITHOUT PREJUDICE.

Edwin S. Bernstein
Administrative Law Judge