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SOL (MSHA) V. EASTOVER MINING
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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),
PETITIONER

Civil Penalty Proceeding

Docket No. VA 80-31
A.O. No. 44-00294-03018

v.

Mine: Virginia No. 1

EASTOVER MINING COMPANY,
RESPONDENT

ORDER OF DISMISSAL

Petitioner filed the following Motion to Hold in Abeyance:

"The Secretary of Labor, by his attorneys, hereby requests an Order holding in abeyance Respondent's Motion to Dismiss in the above matter. As grounds therefor, the Secretary submits:

"1. The Citations alleged violations of 103(f) of the Federal Mine Safety and Health Act of 1977 resulting when three employees of Respondent suffered a loss of pay when accompanying an authorized representative of the Secretary on other-than-regular inspection of the mine.

"2. This issue is now pending an appeal from the Review Commission's decisions in Helen Mining Company, 75-2518, 79-2537 (D.C. Cir.), and Kentland-Elkhorn 79-2503, 79-2536 (D.C. Cir.).

"WHEREFORE, the Secretary requests that Respondent's aforesaid Motion be held in abeyance until a decision is rendered in the above-mentioned cases."

Respondent did not oppose the motion.

In Secretary of Labor, Mine Safety and Health Administration (MSHA) v. The Helen Mining Co., Docket No. PITT 79-11-P, 1 FMSHRC Decs. 1796 (1979), appeal docketed, No. 79-2537 (D.C. Cir. Dec. 21, 1979) and Kentland-Elkhorn Coal Corporation v. Secretary of Labor, Mine Safety and Health Administration (MSHA), Docket No. PIKE 78-399, 1 FMSHRC Decs. 1833 (1979), appeal docketed, No. 79-2536 (D.C. Cir. Dec. 21, 1979), the Commission decided that miners were not entitled to "walkaround compensation" under Section 103(f) of the Federal Mine Safety and Health Act of 1977 for time spent accompanying MSHA inspectors on spot and special mine inspections.

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Those decisions, which are dispositive of the case at hand, have been appealed to the United States Court of Appeals for the District of Columbia Circuit. Even successful appeals take many months and often even years to prosecute. Generally, I am opposed to retaining cases in an inactive status on this office's dockets pending appeals of similar cases. I feel that a preferable solution is to dismiss the cases pending before me without prejudice to reinstatement at such time as may be appropriate.

ORDER

This case is DISMISSED WITHOUT PREJUDICE.

Edwin S. Bernstein
Administrative Law Judge