

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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8 AUG 1980

SECRETARY OF LABOR,	:	Civil Penalty Proceeding
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. YORK 80-81-M
Petitioner	:	A.O. No. 28-00510-05006
	:	
v.	:	Manumsuskin Plant
	:	
GEORGE F. PETTINOS, INC.,	:	
Respondent	:	

DECISION AND ORDER

This case involves a contest of a penalty of \$106.00 for an alleged violation of the prohibition against exposure of miners to excessive concentrations of respirable silica dust. In response to the pretrial order of May 21, 1980, the operator furnished the basis for his contest, namely a calculation of the Threshold Limit Value and Time Weighted Average of the dust sample which he claimed showed no violation occurred.

When the regional solicitor, Mr. Rao, failed to furnish the government's calculation, he was requested to do so. He refused on the ground that such prehearing requirements are overly burdensome, and that it would all come out at the hearing.

For reasons undisclosed by the record, Mr. Rao later advised the citation had been vacated due to an error in the government's calculation of the dust exposure. Had Mr. Rao made full, good faith compliance with Part A of the pretrial order, the operator would have been spared the time and expense of compliance with Part B of the order. **And had the trial Judge** issued a blind setting, as is the usual practice, the parties and the Commission would have been put to the expense of an unnecessary hearing.

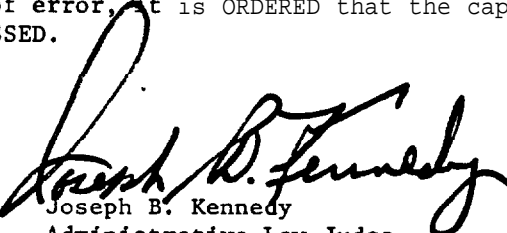
Since the operator appeared pro se, he apparently did not incur the expense of attorney fees, and has made no claim for his own expense. I think it worth noting, however, that the Supreme Court has recently advised trial judges of their authority and responsibility for imposing sanctions on lawyers who unreasonably extend adjudicatory proceedings. In doing so the Court alluded to Charles Dickens' "Bleak Rouse" for

the proposition that "Due to sloth, inattention, or desire to seize tactical advantage, lawyers have long indulged in dilatory practices." Roadway Express Inc. v. Piper, et al., U.S. \_\_\_, 48 L.W. 4836, 4837, n. 4 (June 23, 1980).

The Supreme Court's lament echoes that of bar associations, litigants, the media, and other critics over the "glacial pace" and expense of federal litigation, including most administrative adjudication. Abuse of the administrative process like abuse of the judicial process breeds frustration with the system and, ultimately, disrespect for the law. I pass for the **nonce** the question whether an adjudicatory agency has the power to tax attorneys fees and costs against a party who has litigated in bad faith or may assess those expenses against counsel who refuse to comply with discovery orders.

The only matter now before me is the solicitor's motion to dismiss the proposal for penalty.

In view of the confession of error, it is ORDERED that the captioned matter be, and hereby is, DISMISSED.

  
Joseph B. Kennedy  
Administrative Law Judge

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