

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
SKYLINE TOWERS NO. 2, 10TH FLOOR  
5209 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

11 SEP 1980

NATIONAL MINES CORPORATION, : Contest of Order  
Contestant :  
V. : Docket No. RENT 80-130-R  
: Secretary of Labor, : Order No. 997527  
MINE SAFETY AND HEALTH : December 10, 1979  
ADMINISTRATION (MSHA), :  
Respondent : Stinson No. 5 Mine

DECISION GRANTING MOTION TO VACATE

When counsel for the Secretary of Labor filed his answer in the above-entitled proceeding, he moved that the proceeding be stayed because the Commission's decisions in the The Helen Mining Co., 1 FMSHRC 1796 (1979), and Kentland-Elkhorn Coal Corp., 1 FMSHRC 1833 (1979), had been appealed by the Secretary and UMWA to the United States Court of Appeals for the District of Columbia Circuit. My order issued February 4, 1980, in this proceeding granted the motion for stay. After I became aware that the Commission in The Helen Mining Co., 2 FMSHRC 778 (1980), had denied a motion for stay based on the same argument which had been used by the Secretary's counsel in the motion for stay granted by my order issued February 4, 1980, I issued a further order on July 8, 1980, dissolving the stay and requiring the parties to state whether they wished to have the case disposed of on the basis of a hearing or a stipulation of facts. If the parties were agreeable to stipulating the facts, the order required that stipulations be submitted and the parties were also given the opportunity of submitting a legal memorandum in support of their respective positions if they wished to do so.

Although there are return receipts in the official file showing that counsel for both parties received the order of July 8, 1980, dissolving the stay, I received an answer to the order only from the Secretary's counsel. His reply stated that he believed the facts could be stipulated and his reply also stated that "[t]he sole legal issue raised in this proceeding is whether an operator is required by section 103(f) of the Federal Mine Safety and Health Act of 1977 to pay a miner representative for the time involved in accompanying an inspector who is conducting a spot inspection as opposed to the so-called complete or regular inspection of the mine."

The Secretary's counsel still requests that the case be stayed pending the outcome of the court proceedings, but I am unable to grant that sort of

relief as I explained in my order issued July 8, 1980. Since a copy of the Secretary's response to my order of July 8, 1980, was sent to counsel for National Mines Corporation, I am interpreting his failure to submit any reply as agreement with the position expressed by the Secretary's counsel, namely, that if the proceeding cannot be stayed, it can be disposed of on the basis of a stipulation of the facts.

The facts are stipulated as follows:

Inspector Lester Banks issued on December 10, 1979, at **1:55 p.m.**, Withdrawal Order No. 997527 citing a violation of section 103(f) of the Act because National Mines Corporation had failed to pay a miners' representative who accompanied an inspector during a spot inspection made on November 7, 1979. Order No. 997527 was terminated at **2:15 p.m.** on December 10, 1979, after National Mines Corporation paid the miners' representative for accompanying the inspector on November 7, 1979.

I find that the Commission's decisions in the Helen Mining and Kentland-Elkhorn cases, supra, are dispositive of the issue raised by the Contest of Order or **Application** for Review filed in this proceeding. As stated above, the sole **issue** is whether National Mines Corporation violated section 103(f) when it initially refused to compensate the miners' representative who accompanied the inspector during a "spot" inspection. **Although National Mines** did subsequently pay the miners' representative under protest so as to bring about a termination of Order No. 997527, it is clear under Commission precedent that National Mines did not violate section 103(f) by initially refusing to pay the miners' representative on November 7, 1979. Therefore, I find that Order No. 997527 should be vacated as requested in the Contest of Order or Application for Review filed on January 7, 1980, in this proceeding.

WHEREFORE, it is ordered:

The Contest of Order or Application for Review filed on January 7, 1980, in this proceeding is granted and Order No. 997527 issued December 10, 1979, is vacated.

*Richard C. Steffey*  
**Richard C. Steffey**  
Administrative Law Judge  
(Phone: 703-756-6225)

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