

CCASE:

LOCAL 6025 (UMWA) V. CONSOLIDATION COAL

DDATE:

19801020

TTEXT:

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

LOCAL UNION 6025, UNITED MINE  
WORKERS OF AMERICA (UMWA),  
COMPLAINANT

Complaint of Discharge,  
Discrimination, or Interference

Docket No. WEVA 80-457-D

v.

MSHA Case No. HOPE CD 80-53

CONSOLIDATION COAL COMPANY,  
RESPONDENT

Bishop Mine

ORDER OF DISMISSAL

On June 16, 1980, Complainant filed a complaint of discrimination, alleging that Respondent violated section 105(c) of the Act by refusing to pay a walkaround representative for time spent accompanying a Federal inspector during a "spot" inspection. Respondent filed a motion to dismiss on October 6, 1980, for failure to state a claim upon which relief can be granted. F.R. Civ.P. Rule 12(b)(6); 29 C.F.R. 2700.1(b). In reply, Complainant filed a copy of a motion to stay submitted to Administrative Law Judge Lasher in a case involving the same parties and the same issue. Local 6025, UMWA v. Bishop Coal Co., Docket No. WEVA 80-429-D.

I agree with Judge Lasher's approach in the cited case and therefore will deny the motion for a stay and grant the motion to dismiss. The Commission has decided that a walkaround representative need not be paid for participating in a "spot" inspection. MSHA v. Helen Mining, Inc., 1 FMSHRC 1796 (November 21, 1979). That case is controlling here.

I must note that Complainant submitted a motion to stay without mentioning that the motion had been denied by Judge Lasher and that the Commission on September 16, 1980, had voted not to disturb the judge's decision.

However, I find no authority in the Act for granting Respondent's request for reimbursement of attorney's fees. Therefore, the request will be denied.

Complainant's motion for a stay is DENIED; Respondent's request for attorney's fees is DENIED; Respondent's motion to dismiss is GRANTED and, accordingly, the case is DISMISSED.

James A. Broderick  
Chief Administrative Law Judge