CCASE:
CLINCHFIELD COAL V. SOL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

CLINCHFIELD COAL COMPANY, CONTESTANT	Contest of Order
	Docket No. VA 79-98-R
v.	
	Lambert Fork Mine
SECRERARY OF LABOR, RESPONDENT	

DECISION AND ORDER VACATING ORDER
OF WITHDRAWAL

On August 6, 1980, I issued a show cause order in this case. In that order, I stated:

"The uncontroverted facts as presented in the prehearing statements are that the operator was issued a citation for failure to pay a miner, Bernard Johnson, for the time spent by him in accompanying an inspector in a C.A.A. spot inspection. The order contested here was issued because the operator did not abate that violation. The parties have raised no other issues of material fact. The sole issue in this case is whether an operator is required by 103(f) of the Act to pay a miner who accompanies an inspector during a "spot" inspection of a mine. This issue has been decided by the Commission in Helen Mining Co., PITT 79-11-P, November 21, 1979 and Kentland-Elkhorn Coal Co., November 30, 1979."

The parties were given thirty days to show cause why the case should not be decided upon the uncontroverted facts of record and to present any other evidence or authority which they wanted considered.

Neither contestant nor respondent has filed anything further, therefore, the case will be decided upon the uncontroverted facts in record. In Helen Mining Co., supra, the Commission held that miners are entitled to walkaround pay only for regular inspections. In this case a citation was issued because a miner was not paid for his participation in a C.A.A. spot inspection. The order in question here was issued because the operator did not abate the citation within the time permitted.

> "A mine operator contesting the validity of a 104(b) order of withdrawal is entitled to challenge the existence of the violation set forth in the underlying 104(a) citation. United Mine Workers of America v. Andrus, 581 F.2d 888, 894 (D.C. Cir. 1978); Old Ben Coal Company, 6 IBMA 294, 301 n. 3, 83 I.D. 335. 1976-1977 OSHD par. 21,094 (1987). The language of sections 104(a) and 104(b) of the 1977 Mine Act indicate that the withdrawal order must be pronounced

invalid where the underlying citation fails to describe a violation of either 1977 Mine Act or a mandatory safety standard."

Consolidation Coal Co., Docket No. WEVA 79-129-R, July 31, 1980.

Because the underlying citation does not describe a violation of the Act or regulations under the reasoning of Helen Mining Co., supra and Kentland-Elkhorn Coal Co., supra, the section 104(b) order in question here is invalid. Therefore, the order is vacated.

WHEREFORE IT IS ORDERED the contest of order is GRANTED and the order of withdrawal is VACATED.

James A. Laurenson
Judge