

CCASE:  
LOCAL 781 (UMWA) V. EASTERN ASS. COAL  
DDATE:  
19801126  
TTEXT:

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

LOCAL UNION 781, DISTRICT 17, UMWA,	APPLICANTS	Complaint for Compensation Docket No. WEVA 80-473 Wharton No. 4 Mine
v.		
EASTERN ASSOCIATED COAL CORPORATION, RESPONDENT		

DECISION

On September 23, 1980, Respondent, Eastern Associated Coal Corporation, filed a motion for summary decision in the subject proceeding. On October 7, 1980, Applicant filed a cross-motion for summary decision. Local Union 781, UMWA, represents coal miners at Respondent's Wharton No. 4 Mine.

The record indicates the following undisputed facts: On March 19, 1980, at about 1:30 a.m., a miner was fatally injured at Respondent's Wharton No. 4 Mine; at about 2:30 a.m., Applicants withdrew from the mine to observe a 24-hour memorial period under Article XXII, section (k) of the National Bituminous Coal Wage Agreement of 1978.(FOOTNOTE 1) Under the contract, the miners were not entitled to compensation for their absence during the memorial period.

At 6:19 a.m. on March 19, 1980, federal inspector Joseph LonCavish issued an investigative order of withdrawal under section 103(k) of the Federal Mine Safety and Health Act of 1977, which provides in part: "In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine \* \* \*."

After an investigation, the section 103(k) order of withdrawal was terminated at 3:13 p.m. on March 20, 1980.

~3423

On June 17, 1980, Applicants filed a complaint for compensation under section 111 of the Mine Act. Applicants allege that as a direct result of the 103(k) order of withdrawal, all miners working during the midnight shift (midnight to 8 a.m.) on March 19, 1980, were idled for the last 1.68 hours of their shift and that all miners scheduled to work the day shift (8 a.m. to 4 p.m.) on March 19, 1980, were idled for their entire shift. Applicants seek compensation for 1.68 hours of the midnight shift and 4 hours of the day shift on March 19, 1980.

The basic issue is whether Applicants were idled by the section 103(k) order of withdrawal within the meaning of section 111 of the Act. Section 111 provides in part:

If a coal or other mine or area of such mine is closed by an order issued under section 103, section 104, or section 107, all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift.

The legislative history includes the following explanation by the drafters of section 111:

[T]he bill provides that miners who are withdrawn from a mine because of the issuance of a withdrawal order shall receive certain compensation during periods of their withdrawal. This provision, drawn from the Coal Act, is not intended to be punitive, but recognizes that miners should not lose pay because of the operator's violations, or because of an imminent danger which was totally outside their control. It is therefore a remedial provision which also furnishes added incentive for the operator to comply with the law. [S. Rpt. No. 95-181, 95th Cong., 1st Sess. 46-47 (1977), reprinted in Legislative History of the Federal Mine Safety and Health Act of 1977 at 634-635 (1978).]

The issue raised by this case appears to be one of first impression.

Respondent asserts that Applicants can recover under section 111 only if they were idled directly by the section 103(k) investigative order of withdrawal and can show that they would have worked but for the withdrawal order.

Applicants dispute this, and rely on decisions of the Commission, and of the (predecessor) Interior Department Board of

Mine Operations

~3424

Appeals, holding that an order of withdrawal is effective for purposes of the Act's compensation provision even though no miners were working when the order was issued.

The cases cited by Applicants are distinguishable because they involved miners who would have gone back to work but for the withdrawal order. In the instant case, the withdrawal order was both issued and terminated during a non-compensatory memorial period. On the facts of this case, the miners would not have gone back to work, and would not have been compensated, during the memorial regardless of the issuance or non-issuance of the Government's section 103(k) order.

I conclude that the plain meaning of section 111, as well as its legislative history and recent Commission decisions, dictates denying compensation on the facts presented. In *Youngstown Mines Corporation*, 1 FMSHRC 990, 992 (August 15, 1979), the Commission upheld an award of compensation on the ground that the miners would have worked and received compensation "but for" the withdrawal order. In *Kanawha Coal Company*, 1 FMSHRC 1299 (September 4, 1979), the Commission affirmed a decision that held:

The essential element that must be satisfied to receive compensation under the statute is that a miner was unable to perform his regular duties as a result of a withdrawal order, e.g., that he was "idle" when he otherwise should have been working. Therefore, in order for an applicant to be successful in his claim for compensation, a causal relationship must exist between the issuance of the withdrawal order and the miners not working. "In order for the miners to recover under section [111], the order of withdrawal must be the reason the miners were idled." *Local No. 6025, District 29, United Mine Workers of America v. Bishop Coal Company*, HOPE 73-550 (December 3, 1973). [*Kanawha Coal Company*, Docket No. HOPE 77-193 (February 24, 1978)].

The record shows there is no genuine dispute as to a material fact. I conclude that Respondent is entitled to a summary decision as a matter of law.

ORDER

WHEREFORE IT IS ORDERED that:

1. Respondent's motion for summary decision is GRANTED.
2. Applicants' motion for summary decision is DENIED.
3. The subject proceeding is DISMISSED.

WILLIAM FAUVER  
JUDGE

~FOOTNOTE\_ONE

1 This contract provision, binding on the Applicants and the Respondent, reads in part: "\* \* \* work shall cease at any mine on any shift during which a fatal accident occurs, and the mine shall remain closed on all succeeding shifts until the starting time of the next regularly scheduled work of the shift on which the fatality occurred."