

CCASE:
RANGER FUEL v. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

RANGER FUEL CORPORATION,
CONTESTANT

v.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
RESPONDENT

Contest of Order

Docket No. WEVA 79-218-R

Order No. 0660570

June 8, 1979

Beckley No. 2 Mine

SUMMARY DECISION

This case involves one citation charging a violation of section 103(f) of the Federal Mine Safety and Health Act of 1977 (the Act). Section 103(f) reads in part:

Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine made pursuant to the provisions of subsection [103](a) * * *. [O]ne such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection.

In Kentland-Elkhorn Coal Corporation, 1 FMSHRC 1833 (November 30, 1979), appeal pending No. 79-2536 (D.C. Cir., December 21, 1979), the Federal Mine Safety and Health Review Commission interpreted the section 103(f) so-called walkaround pay provision to apply to section 103(a) "regular" inspections only. In reaching this decision, the Commission relied on its reasoning in Helen Mining Company, 1 FMSHRC 1796 (November 21, 1979), appeal pending No. 79-2537 (D.C. Cir. December 21, 1979). In Helen Mining Company, the Commission held that a miner was not entitled under section 103(f) to walkaround pay for spot inspections pursuant to section 103(i) of the Act and noted that compensation was due only for a miner's accompaniment of a Federal inspector during a section 103(a) "regular" inspection. The Commission concluded therein that "regular" inspections were those described in the third sentence of section 103(a) of the Act, i.e., the four required annual inspections of underground mines and the two required annual inspections of surface mines.

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There is no disagreement between the parties in this case that the inspection giving rise to the citation at bar was a spot inspection and not a "regular" inspection within the framework of the Kentland-Elkhorn and Helen Mining decisions. There is, therefore, no issue before me as to any material fact. Under the circumstances, I find as a matter of law that the Ranger Fuel Corporation did not violate section 103(f) of the Act as charged in the citation at bar.

Accordingly, Citation No. 660570 is VACATED and the civil penalty proceeding, Docket No. WEVA 79-218-R, is DISMISSED.

Gary Melick
Administrative Law Judge