

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

AUG 12 1981

SECRETARY OF LABOR,	:	Complaint of Discrimination
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 81-392-D
ON BEHALF OF THEODORE HAZZARD,	:	
Complainant	:	Pocahontas No. 3 & 4 Mine
	:	
v.	:	
	:	
CANNELTON INDUSTRIES, INC.,	:	
Respondent	:	

DECISION AND ORDER

This is a complaint for discrimination that came on for hearing on August 4 and 5, 1981 in Beckley, West Virginia.' The gravamen of the charge was that the operator attempted to interfere with a miner's right to seek correction of what were claimed to be unsafe mining practices and conditions in the 4-B and Roadside Mines (Pocahontas No. 3 and 4 Mine). The charge arose in the context of a sharp disagreement between the complainant and MSHA's Subdistrict Office in Princeton, West Virginia over the timing and extent of fire drills prescribed by 30 C.F.R. 75.1704-2(e), and the requirement for the designation, approval and inspection of secondary escapeways, 30 C.F.R. 75.1704-1, -2; 1/ 30 C.F.R. 75.1707.

A third consideration that directly affected the actions of the parties involved two petitions for modification of the requirement of 30 C.F.R. 75.305 for weekly methane examinations of at least one entry

1/ MSHA has interpreted 30 C.F.R. 75.1704-2(e) as requiring the evacuation of all miners from the working face to the loading point every 90 days. With respect to the designation of approved escapeways, Section 317(j)(4) of the Act, 30 C.F.R. 75.1707 provides that belt and track or trolley haulage entries be separated from escapeways by relatively airtight stopping materials in order to provide a practically smoke free escapeway in the event fire should occur in the track and/or belt entries. MSHA Underground Inspection Manual 11-619. Despite this, MSHA has permitted the track and belt entries to be designated as escapeways in both the Roadside and 4-B sections. This conflict between the requirements of the law and MSHA's practice has been a source of continuing friction between the Mine Safety Committee and management at this mine. The trial judge recommends that the Chief of MSHA's Safety Division work with the District and Subdistrict Offices to effect a clarification and resolution of what has been a serious source of contention between labor and management at this mine.

of each intake and return airway in its entirety. The first petition involved the left air return in both the 4-B and Roadside Sections. It was granted in September 1979 and permitted the monitoring of the airflow on a daily basis at specified stations instead of traveling the **entire** entry which was deemed unsafe. The second petition filed in April 1980 requested a waiver of the same requirement on the right return in only the 4-B section. Because of its concern over designation of the track and belt entry as a secondary escapeway, its lack of confidence in air monitoring systems, ^{2/} and its belief that the right return is or can be made travelable, the Mine Safety Committee and Local 6029 of the **UMWA** requested the International Union in Washington appeal **MSHA's** grant of the second petition in November 1980. At the time of the hearing, the complainant and the local union were under the impression that the decision on the second petition had not become final. Neither counsel was aware of its status.

On the merits, the evidence unequivocally established that the manifold misunderstandings and conflicts between complainant and other members of the Mine Safety Committee and with MSHA, management and the State Department of mines over walkaround rights, fire drills, evacuation procedures, and the petitions for modification when coupled with the **stresses** that stemmed from the explosion and resulting disaster at **the Ferrell Mine** and numerous grievances generated by a realignment of the labor force at several of the operator's mines led to a tense labor relationship that culminated in a heated verbal exchange between complainant and the operator's general superintendent of mines on December 17, 1980. Fortunately there is no need to detail this event. Suffice it to say that what was said by the management representative went beyond the pale of permissible legal reaction to what he in good faith believed to be an unjustified provocation. Much of the obvious ill feeling that prevailed at the beginning of the hearing was dispelled in the end by the opportunity afforded **all** concerned to thresh the matter out and to get things off their **chest**. For their candid cooperation in this inquiry counsel and the parties, especially Mr. Spengler, **MSHA's** Subdistrict Mgr. are to be commended.

Because the parties agreed to settle this matter on the terms set forth in the consent order entered on the record and adopted and confirmed in this decision, the parties are in a position to make a new beginning and to commence the work of reconciliation of their differences in an atmosphere cleansed of the poisonous suspicions of the past.

For these reasons, I find the settlement agreed upon in accord with the purposes and policy of the Act.

Accordingly, it is ORDERED that:

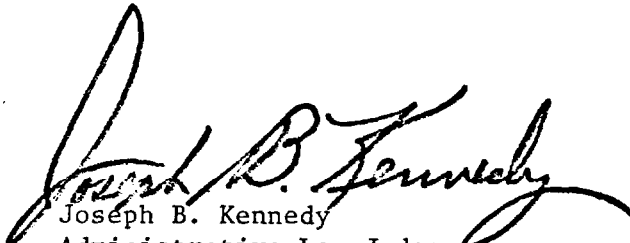
1. Cannelton Industries, Inc., its directors, officers, agents and employees be, and hereby are, ENJOINED and DIRECTED

^{2/} This stemmed from the failure of such a system at Westmoreland's Ferrell Mine in November 1980 to prevent a lethal buildup of explosive gas.

TO CEASE AND DESIST from making any and all statements, verbal or written, designed to interfere with, coerce or restrain any miner from freely exercising rights guaranteed by the Mine Safety Law, including the right to make, file or report alleged safety or health violations or dangers to management, MSHA or the appropriate State authorities.

2. Cannelton Industries, Inc. pay a penalty of \$1,500 for the violation found or or before Friday, August 21, 1981.
3. Cannelton Industries, Inc. immediately post on the Mine Bulletin Board or in places where notices to employees are customarily posted at the Pocohantas No. 3 and 4 Mine (Roadside and 4-B Sections), and maintain the same for thirty (30) consecutive days from the date of posting, a copy of this decision and order.

Finally, it is ORDERED that upon payment of the penalty agreed upon and subject to enforcement of this injunction under the contempt powers and procedures of the United States Courts of Appeals, the aforesaid consent order and this confirming decision be deemed a final disposition of this matter.


Joseph B. Kennedy
Administrative Law Judge

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