FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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AUG 27 1981

LOCAL UNION 1374, DISTRICT 28, UNITED MINE WORKERS OF AMERICA (UMWA), Complainant	:	Complaint for Compensation
	:	Docket No. VA 80-167-C
	:	Order No. 700382
	:	June 18, 1980
v.	:	
	:	Beatrice Mine
BEATRICE POCAHONTAS COMPANY, Respondent	:	

SUMMARY DECISION

Counsel for the complainant in the above-entitled proceeding filed on April 17, 1981, a motion for summary decision pursuant to 29 C.F.R. § 2700.64. The motion was accompanied by a joint stipulation of facts signed by counsel for both complainant and respondent. Since no factual issues are in dispute, I find that the motion for summary decision should be granted.

The issues to be decided in this case will be based on the parties' stipulation of facts set forth below:

1. The Beatrice Mine is owned and operated by the Beatrice Pocahontas Company.

2. The Beatrice Mine is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977 (the "Act").

3. Representatives of the International Union, United Mine Norkers of America ("UMWA"), are authorized representatives for the members of Local Union.1374, employed by the Beatrice Mine for purposes of this proceeding.

4. The administrative law judge has jurisdiction over these proceedings.

5. At times relevant herein Beatrice Pocahontas Company, at its Beatrice Mine, and Local Union 1374, UMWA, were bound by the terms of the National Bituminous Coal Wage Agreement of 1978 (the "Contract").

6. On June 18, 1980, at 6:15 p.m., Ronald Pennington, a duly authorized Mine Safety and Health Administration ("MSHA") inspector, issued Withdrawal Order No. 700382 to Beatrice Pocahontas Company at its Beatrice Mine pursuant to Section 107(a) of the Act.

7. Order No. 700382 was not terminated until 10:30 a.m. on July 10, 1980.

8. The aforesaid order was issued due to the accumulation of explosive concentrations of methane gas in the bleeder entries of the No. 3 longwall area of the Beatrice Mine.

9. No violation of any mandatory health and safety standard promulgated under the Act was alleged in the order.

10. The miners working on the 4:01-p.m.-to-12:00-a.m. shift during which the order was issued were paid for the balance of their shift in accordance with section 111 of the Act.

11. The miners normally scheduled to work the 12:01-a.m.-to-8:00-a.m. shift on June 19, 1980, reported for work. Respondent requested that they remain on the surface until it was determined whether the order would be terminated. After approximately 1-1/2 hours, all underground miners were sent home.

12. These miners received 4 hours of pay at their regular rates.

13. If normal mining operations had been conducted at the Beatrice Mine on June 19, 1980, between 12:01 a.m. and 8:00 a.m., each underground employee normally scheduled to work on that shift would have been offered the opportunity to work his/her full B-hour shift.

14. Union Exhibit 2 (a copy of which is attached) is an accurate list containing.(a) the names of each underground miner who reported to work on June 19, 1980, at 12:01 a.m., (b) his/her rate of pay as of June 19, 1980; and (c) the amount of compensation claimed.

Issue

The issue raised by the complaint in this case, according to UMWA's brief (p. 1), is as follows:

> Are miners idled for six and one-half hours by a !Jithdrawal Order issued on the preceding shift entitled to receive 4-hours compensation under Section 111 of the Act where they received 4-hours reporting pay in accordance with their collective bargaining agreement?

In its brief (p. 2), respondent claims that the issue raised by the complaint is as follows:

> Under the facts stipulated, are the miners who reported to work on the 12:01 a.m. to 8:00 a.m. shift at the Beatrice Mine on June 19, 1980, entitled to compensation, under § 111 of the Act, in addition to the 4-hours' compensation which they have been paid?

On page 1 of its brief, respondent states that the parties agreed that the judge should determine the wording of the issue raised by the complaint. I find for the reasons hereinafter given, that the issue raised by the complaint is as follows:

Are miners idled by a withdrawal order issued on the preceding shift entitled to receive 4 hours of compensation under section 111 of the Act if they also have received, in accordance with Article IX(c) of their collective bargaining agreement, 4 hours of pay for reporting to work?

UMWA's Argument

UMWA's initial brief contends (p. 2) that resolution of the issue in this proceeding requires an interpretation 1/ of the relationship between the statutory provisions of section 111 of the Act and Article IX(c) of the 1978 Bituminous Coal Wage Agreement. The pertinent part of section 111 provides as follows:

> 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. * * *

Article IX(c) of the wage agreement provides as follows:

> Unless notified not to report, when an Employee reports for work at his usual starting time, he shall be entitled to four (4) hours' pay whether or not the operation works the full four hours, but after the first four (4) hours, the Employee shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If, for any reason, the regular routine work cannot be furnished, the Employer may assign the Employee to other than the regular work. * * *

As indicated in Stipulation No. 6, Order No. 700382 was issued at 6:15 p.m. on June 18, 1980. According to Stipulation No. 10, the miners working on the 4 p.m.-to-midnight shift, when the order was issued, were paid for the remainder of the shift. Therefore, the first sentence in section 111 of the Act was satisfied. As indicated in Stipulation No. 11, the miners on the "next working shift" (midnight-to-8-a.m.) after issuance of Order No. 700382 reported for work. As also shown by Stipulation No. 11, they were asked to remain on the surface for 1-1/2 hours until it was determined whether the order would be terminated. After it had been determined that the order would not be terminated on their shift, the miners on the midnight-to-8-a.m. shift were sent home, According to Stipulation No. 12, the miners on the midnight-to-8-a.m. shift were paid for 4 hours at their regular rates of pay. If Order No. 700382 had not still been in effect, the miners on the midnight-to-8:00-a.m. shift would have been given the opportunity to work for a full 8-hour shift (Stipulation No. 13).

UMWA's brief (pp. 2-3) refers to the second sentence in section 111 and argues that interpretation of payment for miners on the "next working shift" must be made in light of the fact that the "period they are idled" pertains

1/ In its reply brief (p. 2) UMWA changed its position as to the need to interpret the Wage Agreement because no dispute exists as to the meaning of Article IX(c) of the Agreement.

to a full g-hour shift. UMWA contends that the awarding of 4 hours of compensation under the second sentence of section 111 is not confined to the initial 4 hours of a shift, "* * * but becomes effective when the miner no longer receives compensation from'his/her employer" (Br., p. 3). UMWA then cites the Commission's decision in Youngstown Mines Corp., 1 FMSHRC 990 (1979), in which the Commission held that miners "on the next shift" after issuance of a withdrawal order are entitled to compensation for the remaining 4 hours of their shift if they are used and paid for abatement work during the first 4 hours of the shift. The primary reason given for the Commission's holding in that case was that the miners would have worked and would have been paid for the last 4 hours of the shift if the withdrawal order had not still been in effect so as to idle them for the remaining 4 hours of their shift. UMWA also cites Peabodv Coal Co., 1 FMSHRC 1785 (1979), in which the Commission held that miners were entitled to receive 3-1/2 hours of pay for the remainder of their shift even though Peabody had paid them for work performed during the first 4-1/2 hours of the "next shift" after issuance of a withdrawal order.

UMWA's brief (p. 4) states that respondent objects to UMWA's effort to use the Youngstown and Peabody cases as precedents for UMWA's position in this case. Respondent, it is said, seeks to distinguish the Commission's holdings in those cases by pointing out that in each of those cases, the miners were paid for the first half of their shifts for work actually performed, whereas in this proceeding, 'the miners were kept at the mine site at respondent's request for only 1-1/2 hours. Therefore, in this proceeding, UMWA says that respondent wants to restrict the Youngstown and Peabody holdings as being applicable only to the extent that they would require respondent to pay the miners for the first 1-1/2 hours while a determination was being made as to whether the order would be terminated on their shift. UMWA says that respondent argues, nevertheless, that since the miners were paid for 4 hours, they received the full 4 hours of compensation which they are required to be paid under the second sentence of section 111.

UMWA's brief claims that respondent's argument is defective because it misconstrues Article LX(c) of the Wage Agreement which clearly provides that miners who report for work are entitled to 4 hours of pay regardless of how much work is actually performed. Therefore, UMWA argues (Br., p. 5) that it is irrelevant that the miners received 4 hours of pay even though they were kept at the mine for only 1-1/2 hours before they were sent home. UMWA further argues that under Article III(b)(2) of the Wage Agreement, neither party to the Agreement waived any rights relating to the Coal Act. UMWA claims that section 111 of the Act must be interpreted so as to give full effect to the parties' intention to preserve both their statutory and contractural rights. UMWA claims that the aforesaid purpose can be achieved by interpreting the second sentence of section 111 so as to treat the first four hours of the "next working shift" as non-idle time. UMWA concludes the foregoing portion of its argument by claiming that there is no basis for distinguishing the Commission's holdings in the Youngstown and Peabody cases from the facts in this case because the important point in this proceeding and in those cases is that the miners on the "next working shift" were idled for the last 4 hours of the shift because of the issuance of a withdrawal order.

UMWA also argues (Br., p. 6) that respondent's interpretation of section 111 as providing for no pay over and above the 4 hours which the miners have already received "* * * disregards the well-established principle recognizing the separate and independent nature of statutory and contractual rights." UMWA supports that argument by referring to the Commission's decision in the Youngstown case, 1 FEISHRC at 993, in which the Commission rejected an argument to the effect that provisions in the Wage Agreement should be allowed to control an interpretation of section 110(a) of the 1969 Coal *Act.* UMWA also cites a statement by the court in Phillips v. IBMA, 500 F.2d 772, 777 (D.C.Cir. 1974) that "* * * if there is no right of action under the Mine Safety Act independent of the usual labor dispute settlement mechanisms, there is no right of action under the Mine Safety Act at all."

Respondent's Argument

As indicated above under the heading "Issue", respondent does not agree with UMWA's statement of the issue in this proceeding. Respondent claims that no reference whatsoever should be made to UMWA's contention that the 4 hours of compensation which the miners on the midnight-to-8-a.m. shift were paid was awarded to them under the "reporting pay" provisions in Article IX(c) of the Wage Agreement. Respondent argues that it is outside the scope of a disagreement as to the meaning of the second sentence in section 111 of the Act for the Commission to consider whether the 4 hours of compensation may have been awarded to the miners because they happened to report for work so as to trigger a contractual provision which requires respondent to pay the miners for 4 hours if they are allowed to report to work.

Respondent enlarges upon the argument above on page 2 of its brief by emphasizing that this is a *case* which has arisen solely under the provisions of section 111. Respondent argues that if any compensation in addition to that which has already been paid is found to be due, that determination must be made under the provisions of the second sentence of section 111 which clearly provides that the miners on the "next working 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" [Emphasis supplied by respondent.]. Respondent states that it is abundantly clear that the requirements of the second sentence of section 111 have been satisfied in this instance. Respondent points out that the order in question was issued on the preceding shift and was not terminated at the beginning of the midnight-to-8-a.m. shift, or "next working shift" (Stipulation No. 7). Respondent further notes that the miners who reported for work on the midnight shift were undoubtedly idled by the order and were entitled to full compensation at their regular rates of pay for the period idled, but for not more than 4 hours of that shift. Respondent says that the miners have in fact been paid at their regular rates of pay for 4 hours (Stipulation No. 12). Therefore, respondent concludes that no further compensation can be found to be due under section 111.

Respondent's brief (p. 3) recognizes that UMWA claims that the facts in this proceeding require an interpretation of the relationship between the contractual provisions of the Wage Agreement and the statutory provisions of

section 111. Respondent also acknowledges UMWA's argument that respondent's position in this case misconstrues the "reporting-pay provisions" of the Wage Agreement. Respondent's answer to UMWA's arguments about the Wage Agreement is that the Commission has no jurisdiction over the Wage Agreement nor authority to mediate disputes arising under the Wage Agreement.

Respondent states (Br., p. 4) that even if one puts aside its jurisdictional argument above, there are defects in UMWA's interpretation of section 111. For example, respondent takes exception to UMWA's contention that the Commission can find that additional compensation is due under the second sentence by considering the 4 hours of "reporting pay" awarded the miners under the Wage Agreement as "non-idle time". Respondent argues that the word "idled", as used in section 111, must be considered to have the general meaning given to that word, namely, "not occupied or employed". Respondent says that if an individual is working, then he is working; if he is not working, then he is idled. Respondent concludes the foregoing argument by noting that there is nothing in the Wage Agreement which can change the meaning of a miner's "working/idled status" under section 111.

Finally, respondent's brief (pp. 4-5) contends that the Peabody and Youngstown cases, supra, relied on by UMWA, can readily be distinguished from the facts in this proceeding. Respondent points out that in each of those cases the miners on the "next working shift" were paid for working during the first half of the shift and that the Commission simply held that they were idled by the order during the second part of the shift and were entitled to receive up to 4 hours of compensation for the remaining part of the shift during which they were idled by the order. Respondent, therefore, concludes that the Youngstown and Peabody cases do not turn on the question of money received, but rather depend on "* * * the logical distinction between work time versus idle time upon which the Youngstown Mines and Peabody cases were decided" (Br., p. 5).

UMWA's Reply Brief

UMWA's reply brief (pp. 1-2) cites the Commission's recent decision in Eastern Associated Coal Corp., 3 FMSHRC 1175 (1981), as grounds for rejecting respondent's claim that the Commission, in interpreting section 111, is precluded from recognizing provisions regarding "reporting pay" contained in the Wage Agreement. UMWA's brief (pp. l-2) summarizes the holding in the Eastern Associated case as follows:

> * * * In Eastern Associated, the UMWA requested compensation under Section 111 of the Federal Mine Safety and Health Act ("the Act") following the issuance of a withdrawal order pursuant to Section 103(k) of the Act. The order was issued a few hours after the miners had left the mine in accordance with Article XXII(k) of the National Bituminous Coal Wage Agreement of 1978 ("the Contract"). This clause provided for the withdrawal without pay of miners from the mine for a 24-hour memorial period following a fatality.

The Commission declined to award the compensation requested, reasoning that there was no causal connection between the idling of the miners and the withdrawal order. This result did not extinguish or supplant any contractual rights to compensation, since none existed under Article XXII(k) of the collective bargaining agreement. The Commission stated that in some cases it was necessary to examine contractual pay rights in order to delineate the statutory pay rights granted under Section 111.

Following the summary set forth above, UMWA's brief relies upon the following portion of the Commission's decision in the Eastern Associated case (3 FMSHRC at 1179):

> We cannot agree with the Union's contention that denial of section 111 compensation would "supplant [the 1977 Mine Act] with a contract provision." Br. 3. It is true that we do not decide cases in a manner which permits parties' private agreements to overcome mandatory safety requirements or miners' protected rights; nor do we unnecessarily thrust ourselves into resolution of labor or collective bargaining disputes. See Youngstown Mines, supra, 1 FMSHRC at 993-995. However, section 111 requires us to determine whether there is a pre-existing private entitlement to pay. To make that determination, we are occasionally obliged to examine the parties' collective bargaining agreement which fixes pay rights. In addition, as here, we must sometimes look to the agreement to understand the reasons for a private withdrawal. In the present case, there is no need for contract interpretation because the parties are agreed that the miners withdrew pursuant to the memorial provision and have stipulated that under that provision the miners were not entitled to pay from Eastern Associated during the memorial period. Similarly, the Union's reliance (Br. 2-3 & nn. 2 & 3) on certain recitations in the contract that neither party waives its 1977 Mine *Act* "rights" would incorrectly transform section 111 into a statutory indemnity against absence, loss, or surrender of private pay entitlements. While the Union gave up a private claim to pay, it has not waived any statutory entitlement. [Commission's emphasis.]

UMWA's reply brief (pp. 2-3) contends that if the Commission's holding in the Eastern Associated case is applied to the facts in this proceeding, it will be found that no contractual interpretation is necessary in this case either because the parties have stipulated that the miners received 4 hours of pay for 1-1/2 hours of work (Stipulation Nos. 11 & 12). UMWA says that this payment was not the result of a mistake or any generosity on the part of respondent, but was rather required by the "reporting-pay provisions" of the Wage Agreement. UMWA says there is no dispute about the interpretation of the Wage Agreement and that there is no unnecessary intrusion into the collective bargaining process by a determination of the relationship between the reporting-pay provisions and section 111 of the Act.

UMWA's reply brief (p. 3) argues that there is a direct causal connection between the withdrawal order issued in this case and the failure of the miners to receive 4 hours of pay for the final 4 hours of the "next working shift".

UMWA contends, finally, that since there was a preexisting private entitlement for the final 4 hours of the shift, the miners are entitled under the second sentence of section 111 to receive compensation for those 4 hours of idlement resulting from issuance of the order.

Consideration of Parties' Arguments

In the portion of my decision entitled "Issue", supra, I stated that I would explain why I had largely adopted UMWA's instead of respondent's, statement of the issue. I believe that I am obligated under the Commission's decision in the Eastern Associated case, supra, to give recognition to the reason that the miners on the "next working shift" received compensation for 4 hours "at their regular rates of pay". In the portion of the Commission's decision in that case quoted above, the Commission stated that it believed that "* * * section 111 requires us to determine whether there is a preexisting private entitlement to pay" [Commission's emphasis]. In that case, the Commission found that no preexisting right to pay existed because the miners had waived their right to pay during the 24-hour memorial period. In this proceeding, it is undisputed that the miners 'on the next working shift" were entitled to 4 hours of pay because they had reported for work and were kept for 1-1/2 hours until it was determined that the withdrawal order would not be terminated during their shift. As UMWA argues, the miners were paid for 4 hours of work through no mistake or generosity of respondent, but because the Wage Agreement required the miners to be paid for 4 hours if they were allowed to report for work.

My framing of the issue in this case by reference to the payment of 4 hours of compensation under the Wage Agreement is also supported by the fact that in the Eastern Associated case, the Commission referred to the Wage Agreement in stating the issue. Its decision began with the following statement (3 FMSHRC at 1175):

> The issue in this case is whether miners are entitled to compensation under section 111 of the * * * Act * * * where a withdrawal order under section 103(k) * * * was issued after the miners had already withdrawn from the mine pursuant to their collective bargaining agreement's non-compensated "memorial period." * * *

In its Eastern Associated decision, the Commission made it clear that each dispute as to the proper interpretation of section 111 would have to be made on a case-by-case basis. The Commission also stated that compensation might be awarded under section 111 if withdrawal were "independently justified by exigent circumstances". Moreover, the Commission noted in its Eastern Associated decision that even if the order in that case had not been issued, the miners "would not have worked or reported" for work on the midnight-to-8-a.m. shift '3 FMSHRC at 1179). [Emphasis supplied.]

I think rhat UMWA correctly interprets the first 4 hours of the "next working shift" under the second sentence of section 111 as 'non-idle time" in contending that the miners are entitled to 4 hours of additional compensation. There are at least two reasons for the foregoing conclusion. First, the miners on the midnight-to-8-a.m. shift, or 'next working shift' were not

idle during the first part of their shift. The act of reporting for work was preceded by their driving from their residences to the mine. Exhibit Ko. 2 to the stipulations shows that there were 56 of them. In all the cases in which I have had testimony concerning the distances miners drive to work, I have found that some of them drive a considerable distance. Consequently, the act of reporting for work at today's gasoline prices is an activity for which the miners are entitled to be paid. The miners were not permitted to return home immediately, but were kept at the mine for 1-1/2 hours to their detriment. Consequently, the first 4 hours of the shift should be considered as "non-idle time". As respondent argues in its brief, a person is idle if he is not employed. The miners were employed and they reported for work, so I cannot see how they could be considered to have been idle at the beginning of their shift.

My second reason for considering the first 4 hours of the shift to be "non-idle time" is that I don't agree that respondent has sufficiently succeeded in distinguishing the holdings in the Youngstown and Peabody cases from the facts in this proceeding. Respondent claims that in those cases, the miners were paid for working during the first part of their shift and that the Commission held that they were entitled to be paid for the remaining part of the shift because they would have worked during the second part of the shift except that they were idled by the failure of the withdrawal order to be terminated. In the Peabody case, the Commission stated that "[i]n order to resolve a possible contractual dispute over reporting pay, Peabody permitted the eight miners to work the first four and one-half hours of their shift" (1 FMSHRC at 1787).

In this proceeding, respondent obviously chose to make an interpretation of the reporting-pay provisions of the Wage Agreement and chose to pay the miners for 4 hours of compensation. Thus, the payment of 4 hours of compensation in this proceeding was in return for the miners having reported for work. Consequently, I don't think that the Commission's holdings in the Youngstown and Peabody cases can be distinguished from the facts in this proceeding. In this proceeding, as in those cases, the miners were paid for something they did, namely, 'reporting for work and staying at the mine for 1-1/2 hours.

If a company allows its miners to report for work at all, it knows that it will have to pay them for 4 hours under the Wage Agreement. The company also knows that it will have to pay for 4 hours under the second sentence of section 111 if the order is not terminated. If I were to interpret section 111 as I am urged to do by respondent, a company would be able to act indifferently about notifying its miners not to report for work and could allow them to come to the mine and then leisurely determine within the first 4 hours of the shift whether the order is going to be terminated during the "next working shift". An imminent danger order had been issued in this instance because of an accumulation of explosive concentrations of methane in the bleeder entries of the No. 3 longwall area of the mine (Stipulation Nos. 6 & 8). The order was issued on June 18 and was not terminated until July 10 (Stipulation Nos. 6 & 7). It does not appear that management should have had any great difficulty in determining that the order would not be terminated on the "next working shift" so that the miners could have been notified not to report for work.

My decision that the second sentence in section 111 requires that the miners in this proceeding be paid for the remaining 4 hours of their shift, because they were idled for those 4 hours by the withdrawal order, is not unfair to respondent because it can reduce its exposure to having to pay the miners for 4 hours under the Wage Agreement and for 4 hours under section 111 by simply notifying the miners not to report for work "on the next working shift" when a withdrawal order issued on the preceding shift has not been terminated.

Interest

UMWA's brief (p. 8) requests that I award interest at the rate of 12 percent. UMWA correctly cites the Youngstown and Peabody cases, supra, as precedents for the Commission's having ordered the payment of interest in compensation cases. In each of those cases, the Commission awarded interest at the rate of 6 percent per annum. In the Peabody case, the judge had awarded interest at the rate of 6 percent per month which would be 72 percent per annum. The Commission reduced the rate.from 6 percent per month to 6 percent per year without any discussion, presumably because a rate of interest of 72 percent per annum cannot be justified even at today's prevailing high interest rates.

I have ordered payment of rates of interest in discrimination cases in excess of 6 percent per annum. Except for having indicated in the Peabody case that a rate of 6 percent per month is excessive, I do not believe the Commission has established any guidelines to be used in determining how to arrive at an equitable rate of interest. UMWA's brief (p. 8) states that the National Labor Relations Board has adopted the sliding interest scale charged or paid by the Internal Revenue Service on the underpayment or overpayment of federal taxes. UMWA's brief (p. 8) states that when its attorney checked with the Internal Revenue Service, he learned that the current interest rate being used by IRS is 12 percent per annum.

UMWA points out that the federal prime interest rate at which businesses, such as respondent, borrow money is currently almost three times higher than the 6 percent rate awarded in the Youngstown and Peabody cases. UMWA states that the disparity between a 6-percent rate and the prime rate serves as an incentive for operators to delay payment of compensation owed under the Act for as long as possible since the operators are, in effect, borrowing money from the miners at about one-third the rate of interest the operators would otherwise pay.

Respondent's brief does not discuss the issue of interest raised in UMWA's initial brief.

It appears to me that UMWA has made a convincing argument for ordering the payment of compensation at a rate of 12 percent. I doubt that any miner could borrow money to buy an automobile or house at a rate of interest as low as 12 percent. Therefore, I shall hereinafter provide for the compensation due the miners under this decision to be paid at a rate of 12 percent. A rate of 12 percent is not unfair to respondent and is on the low side when considered from the standpoint of what the miners would have to pay to borrow money.

WHEREFORE, for the reasons hereinbefore given, it is ordered:

(A) The motion for summary decision filed by UEMA on April 17, 1981, is granted.

(B) The Complaint for Compensation filed on March 23, 1981, is granted and respondent is ordered, within 30 days from the date of this decision, to pay each miner the 4 hours of compensation shown on Exhibit 2 to the parties' stipulations in this proceeding. The compensation shall be paid with interest at 12 percent per annum from June 19, 1980, to the date of payment.

Richard C. Steffey

Richard C. Steffey
Administrative Law Judge
(Phone: 703-756-6225)

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Active Work Force on Third Shift
Beatrice Mine as of June 19, 1990

UNION EXHIBIT #2

NAME	HOURLY RATE	HOURS PAID	AMOUNT CLAIMED
Jimmy A. Absher	10.565	4	43.46
Berk S. Artrip, Jr.	10.160	4	41.84
Steve A. Bailey	10.565	4	43.46
Henry Baker, Jr.	10.160	4	41.84
Ted A. Baldwin	9.498	4	39.19
Joe Blevins	10.565	4	43.46
Carl G. Bobinski	10.160	4	41.84
Glen Boyd	10.160	4	41.84
Danny R. Boyd	10.160	4	41.24
Harliss R. Breeding	10.160	4	41.84
Ruby Brown	9.498	4	39.19
Rolley Campbell	9.793	4	40.37
Raymond Clevinger	10.160	4	41.84
Jessie L. Daniels	10.160	4	41.84
Frankie L. Deel	10.565	4	43.46
Ralph J. Fitzgerald	10.160	4	41.84
Thadius M. Hagy	10.565	4	43.46
Thadius K. Hagy	10.565	4	43.46
Gordon R. Hale	9.45;	4	39.19
James D. Hale	10.565	4	43.46
Paul W. Harris	10.160	4	41.84
Andrew E. Keen	10.160	4	41.84
Jerry R. Keene	10.565	4	43.46
Irven D. Kincaid	10.565	4	43.46
James A. Mabe	9.793	4	40.37
Ronnie E. Maggard	10.565	4	43.46
Sidney A. Maxwell	10.565	4	43.46
Steven G. McBride	10.565	4	43.46
Lanny D. Miller	10.160	4	41.84
Brian D. Money	10.565	4	43.46
Darrell Owens	10.269	4	42.28
Perry Lee Perdue	10.160	4	41.84
Jerald W. Plaster	10.160	4	41.84
Phillips C. Presley	10.565	4	43.46
James C. Reynolds	10.565	4	43.46
Ronald G. Richardson	10.565	4	43.46
Ernest Rife	10.565	4	43.46
Jams H. Shortridge	10.565	4	43.46
Rickey Shortridge	10.565	4	43.46
Ronald W. Shortridge	10.565	4	43.46
Andy W. Shortt	10.565	4	43.46
Carlos Shortridge	9.793	4	40.37
Dennis C. Smith	10.565	4	43.46
Gregory K. Smith	10.565	4	43.46
Arnold C. Stanley, Jr.	10.565	4	43.46
Teddy Stiltner	10.160	4	41.84
Lee Roy Stiltner	9.906	4	40.82
Bobby J. street	10.565	4	43.46
Andrew Szaller	10.565	4	43.46
Freddie L. Tickle	10.160	4	41.84
Raymond E. Tiller	10.565	4	43.46
Bonnie W. Toney	10.565	4	43.46
Danny W. Vandyke	10.565	4	43.46
Cecil Ward, Jr.	10.565	4	43.46
Edward A. Wells	10.565	4	43.46
DennisJ. White	10.565	4	43.46