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SOL (MSHA) v. SOUTHERN COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

v.

SOUTHERN OHIO COAL COMPANY,
RESPONDENT

Civil Penalty Proceeding

Docket No. LAKE 80-142

A. C. No. 33-02808-03050

Raccoon No. 3 Mine

DECISION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

The issue involved in this proceeding is whether Respondent unlawfully refused to pay a representative of miners walkaround pay for time spent on a "ventilation technical inspection" and a "roof control survey." Respondent contends that a "spot" inspection was involved while Petitioner initially contended that a regular inspection was involved.

After intervening procedural events, Respondent renewed its quest for dismissal in a motion for summary decision received March 9, 1981. In its response thereto Petitioner indicated:

The present case involves the issue of whether a miners' representative is entitled to compensation for his participation in a so-called "spot" inspection of the respondent's mine. This issue is substantially the same legal issue that is raised in the cases of Secretary of Labor v. The Helen Mining Company 1 MSHC 2193 (FMSHRC, November 21, 1979), appeal pending No. 79-2537 (D.C. Cir., December 21, 1979) and Secretary of Labor v. Kentland Elkhorn Coal Corporation, 1 MSHC 2230 (FMSHRC, November 30, 1979), appeal pending No. 79-2536 (D.C. Cir., December 21, 1970), cases presently on appeal to United States Court of Appeals for the District of Columbia.

Petitioner now indicates in its letter of September 22, 1981, that a "spot" inspection is involved in this proceeding, but renews its contention that the Commission's decisions with respect to walkaround pay entitlement are incorrect. That miners' representatives are not entitled to pay for participation in "spot" inspections was held by the Commission in the cases of Secretary of Labor v. The Helen Mining Company, 1 MSHC 2193 (FMSHRC, November 21, 1979), appeal pending No. 79-2537 (D.C. Cir., December 21, 1979) and Secretary of Labor v. Kentland Elkhorn Coal Corporation, 1 MSHC 2230 (FMSHRC, November 30, 1979), appeal pending No. 79-2536 (D.C. Cir., December 21, 1979), cases presently on appeal to the United States Court of Appeals for the District of Columbia. I am obliged to follow the Commission's decisions until and unless the same are overruled.

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Accordingly, Respondent's motion for summary decision is GRANTED, and this proceeding is DISMISSED.

Michael A. Lasher, Jr. Judge