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BERALDO GRIJALVA V. ORACLE MINING
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

BERALDO GRIJALVA,
COMPLAINANT

v.

ORACLE RIDGE MINING PARTNERS,
RESPONDENT

COMPLAINT OF DISCHARGE,
DISCRIMINATION OR INTERFERENCE

DOCKET NO. WEST 81-255-DM

MSHA CASE NO. MD 78-58

DECISION AND ORDER

Appearances:

Beraldo Grijalva
P.O. Box 374
Marana, Arizona 85238
Pro Se

Stephen Pogson Esq.
363 North First Avenue
Phoenix, Arizona 85003,
For the Respondent

Before: Judge Virgil E. Vail

STATEMENT OF THE CASE

Pursuant to a notice of hearing dated August 31, 1981, a hearing in the above-entitled proceeding was held in Tucson, Arizona, on October 6, 1981.

At the hearing, the complainant, appearing with his son, stated that he had contacted an attorney several weeks prior to the hearing and had expected the attorney would represent him, however the attorney was not present.

Further inquiry revealed that the complainant had contacted an attorney and given him the various documents related to this matter to review. These documents included the Notice of Hearing which set forth the date and time of the hearing. The attorney was to contact the complainant but failed to do so. During a recess of the hearing, complainant learned that the attorney was attending another hearing and would not be available for this matter. The complainant was advised that he could proceed on his own, but he stated that he did not wish to proceed and wished to drop the case. (Tr. 11).

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The respondent's attorney argued that the complainant had been given adequate notice of the date, time and place of the hearing and that the attorney was also aware of the hearing. Counsel for respondent stated that he was prepared to proceed at that time.

FINDINGS OF FACT

Having considered all of the circumstances involved, I make the following findings:

1. That the complainant had sufficient notice of the date, time and place of this hearing.
2. That the complainant contacted an attorney on one occasion but failed to re-contact him prior to the hearing and therefore made insufficient effort to determine if the attorney would represent him or attend the hearing.
3. That no notice of appearance was made by an attorney in this matter on behalf of the complainant.
4. That the complainant was afforded an opportunity to proceed on his own in this matter, but stated he wanted to drop the case.
5. That the respondent's attorney was in attendance and was prepared to call witnesses and present evidence.
6. That considerable time and expense was incurred in setting and attending this hearing and it would be a hardship on the respondent to continue the matter to a later date.

ORDER

I hereby accept the complainant's statement that he wished to drop the matter and not proceed further as a motion to dismiss.

Accordingly, it is ORDERED that complainant's motion be GRANTED and the case DISMISSED WITH PREJUDICE.

Virgil E. Vail
Administrative Law Judge