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SOL (MSHA) V. KENTUCKY CARBON
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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.

KENTUCKY CARBON CORPORATION,
RESPONDENT

Civil Penalty Proceeding

Docket No. KENT 81-140

A. C. No. 15-11161-03043D

Calloway No. 1 Mine

DECISION APPROVING SETTLEMENT

The parties have reached a settlement of the violation involved in the total sum of \$1,000.00. MSHA's initial assessment therefor was \$5,000.00. In their joint motion the parties indicate:

"The parties, by counsel, after lengthy discussions of the criteria set forth within section 110(i) of the Act and a review of the trial record (Docket No. KENT 80-145-D) consisting of 653 pages, have agreed that the pending matter should be settled for \$1,000.

The following is a discussion of the section 110(i) criteria.

1. Negligence - The violation resulted from a low degree of ordinary negligence. This conclusion is based upon the following considerations:

a. The failure of Gooslin, the discriminatee, to timely notify Kentucky Carbon of his intentions to make a safety inspection on the night of September 30, 1979.

b. Gooslin's unprotected activity, i.e., "On September 30, 1979, complainant Bobby Gooslin engaged in the following activity which does not constitute protected activity under section 105(c) of the Act: After being refused the right to enter and inspect the mine by Shift Foreman James Christian, Gooslin said, "I'm going to show these damn Hagers that they don't run this place.'" Secretary of Labor, on behalf of Bobby Gooslin v. Kentucky Carbon Corporation, Docket No. KENT 80-145-D (FMSHRC, March 18, 1981), page 24.

c. The comment made by Administrative Law Judge Laurenson in the original Gooslin case at page 15: "The UMWA and Kentucky Carbon were on a collision course. To put it kindly, MSHA was merely negligent. While these events are not directly related to the issues at hand, they set the stage for the events of September 30, 1979, which culminated in the work stoppage and the discharge of Bobby Gooslin." The

events referred to in the above quotation are:

1. Strained labor-management relations at the Calloway No. 1 Mine.

2. A history of wildcat work stoppages.

3. Kentucky Carbon's written notification of its intent to discharge any miner involved in any unauthorized work stoppage.

4. The discharge and subsequent reinstatement of thirteen miners who invoked their individual rights pursuant to the wage agreement, by refusing to work in an area which they considered unsafe.

5. A continuing dispute between UMWA and Kentucky Carbon regarding the requirement of a twenty-four hour notice before making a safety committee inspection.

6. The UMWA and Kentucky Carbon dispute involving MSHA in dealing with the propriety of hauling supplies on mantrips.

2. Gravity - This violation could have a future effect upon miners who desire to assert rights protected by section 105(c) of the Act. However, the parties believe that the gravity of this matter has been negated by the decision in the discrimination proceeding heretofore mentioned.

3. Good Faith - Good faith in the traditional sense is not applicable to the matter at hand. The fact that Kentucky Carbon refused to voluntarily reinstate Bobby Gooslin after the Mine Safety and Health Administration determined that Gooslin's discharge was a violation of section 105(c) of the Act should not be considered as a lack of good faith; after all, Kentucky Carbon was exercising its right to contest said MSHA findings by means of civil litigation as prescribed within the Federal Mine Safety and Health Act of 1977.

4. History - Kentucky Carbon Corporation was a respondent in three prior 105(c) discrimination cases filed with the Federal Mine Safety and Health Review Commission. However, all three cases were settled without an affirmative finding of a section 105(c) violation.

5. Size - Kentucky Carbon Corporation is a large operator.

6. Ability to Remain in Business - The agreed penalty will not affect Kentucky Carbon Corporation's ability to remain in business.

It is the parties' belief that approval of this settlement is in the public interest and will further the intent and purpose of the Federal Mine Safety and Health Act of 1977."

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ORDER

Respondent, if it has not previously done so, is ordered to pay \$1,000.00 to the Secretary of Labor within 30 days from the date of this decision.

Michael A. Lasher, Jr.
Judge