

CCASE:
NATIONAL MINES V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

NATIONAL MINES CORPORATION,
CONTESTANT

Contest of Order

Docket No. KENT 80-130-R

v.

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

Order No. 997527
December 10, 1979

Stinson No. 5 Mine

DECISION ON REMAND

A decision was originally issued in this proceeding granting the notice of contest and vacating Order No. 997527, 2 FMSHRC 2576 (1980). The original decision was based on the Commission's decisions in The Helen Mining Co., 1 FMSHRC 1796 (1979), and Kentland-Elkhorn Coal Corp., 1 FMSHRC 1833 (1979), in which the Commission had held that an operator does not have to pay a miner who accompanies an inspector who is making a "spot" inspection.

The Commission issued an order on May 20, 1982, remanding the case to me for further proceedings consistent with the decision of the United States Court of Appeals for the District of Columbia Circuit in United Mine Workers of America v. Federal Mine Safety and Health Review Commission, 671 F.2d 615 (1982), in which the court reversed the Commission's rulings in the Helen Mining and Kentland-Elkhorn cases and held that operators are required to pay miners for accompanying inspectors who are making "spot" inspections. I issued a procedural order on May 27, 1982, requesting that counsel for the parties advise me as to whether they wished to present any additional evidence or file any additional briefs before a decision on remand was issued.

Counsel for contestant orally advised me on June 14, 1982, that he does not wish to present any additional evidence or make any additional arguments. Counsel for the Secretary of Labor filed on July 9, 1982, a letter advising me that he does not wish to introduce any additional evidence or make any additional arguments.

Order No. 997527 was issued on December 10, 1979, citing contestant for a violation of section 103(f) of the Federal Mine Safety and Health Act of 1977 because contestant had declined to pay a miners' representative who had accompanied an inspector during a "spot" inspection made on November 7, 1979. The order was terminated on the same day after contestant

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had paid the miners' representative for accompanying the inspector on November 7, 1979. Inasmuch as the court's opinion in the UMWA case cited above requires that miners' representatives be paid for accompanying inspectors who are conducting "spot" inspections, I find that my original decision issued in this proceeding erroneously held that Order No. 997527 was invalid. Therefore, Order No. 997527 should be reinstated and the notice of contest should be denied.

WHEREFORE, it is ordered:

(A) The order accompanying the decision issued September 11, 1980, 2 FMSHRC 2576, is vacated as having been issued in error.

(B) The notice of contest filed on January 7, 1980, in Docket No. KENT 80-130-R is denied and Order No. 997527 dated December 10, 1979, is reinstated and affirmed.

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