

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

OCT 18 1984

LOCAL UNION 1609, DISTRICT 2,	:	COMPENSATION PROCEEDINGS
UNITED MINE WORKERS OF	:	
AMERICA (UMWA),	:	Docket No. PENN 84-158-C
Complainant	:	Order No. 2254681; 2/16/84
	:	
v.	:	Docket No. PENN 84-159-C
	:	59 Orders of Withdrawal
GREENWICH COLLIERIES,	:	
DIVISION OF PENNSYLVANIA	:	Greenwich Collieries No. 1
MINES CORPORATION,	:	
Respondent	:	

SUMMARY DECISIONS

Before: Judge Koutras

Statement of the Case

These consolidated proceedings concern two complaints filed by the complainants against the respondent pursuant to section 111 of the Federal Mine Safety and Health Act of 1977, seeking compensation for miners at the respondent's Greenwich Collieries No; 1 Mine. The cases are before me for a ruling on the respondent's Motions for Summary Decision, filed pursuant to Commission Rule 64,29 C.F.R. § 2700.64. Complainant's have filed oppositions to the motions, and based on the pleadings filed by the parties, the facts which prompted the complaint follow below.

On February 16, 1984, at approximately 5:00 a.m., an explosion occurred at the Greenwich No. 1 Mine. Subsequently, that same day, at 7:00 a.m., an MSHA inspector issued Order No. 2254355, pursuant to section 103(j) of the Act (Exhibit 1 attached to respondent's Motion for Summary Decision). This Order was subsequently modified by another MSHA inspector from a 103(j) to a 103(k) Order at 2:00 p.m., that same day (Exhibit 2 attached to respondent's motion). This order applied to the entire mine, and prohibited anyone from entering the mine other than federal and state inspectors, UMWA representatives, and company officials. The 103 order thus idled all miners scheduled to work at the mine, and on its face, states as follows:

A methane ignition and/or explosion has occurred at approximately 5:00 a.m. in and around the active D-5 (037) working section. Three miners who were working in the D-3 section are not accounted for. The following persons are permitted to enter or remain in the mine for the purpose of rescue operations. State and MSHA officials, company officials, and UMWA personnel who are necessary to conduct the rescue operations.

At 10:15 a.m., on February 16, 1984, the same inspector who issued the modified section 103(k) order issued Withdrawal Order No. 2254681, pursuant to section 107(a) of the Act. This order applied to the entire mine, and the condition or practice shown on the face of the order states as follows:

An underground mine explosion has occurred in this mine. This Order is issued to assure the safety of any persons in the mine until an examination is made to determine if the entire mine is safe.

The section 107(a) order required the withdrawal of all miners from the mine except those referred to in section 104(a).

On March 20, 1984, the mine was still idled, and MSHA commenced a "Safety and Health (Saturation) (AAB) Inspection" of the entire mine on that day. As a result of that inspection, MSHA inspectors issued 59 withdrawal orders pursuant to section 104(d) (1) of the Act.

At the time of the filing of both complaints, the complainant indicated that it was incapable of listing every coal miner affected by the section 107(a) order or the 59 orders, or the exact dollar amount claimed under section 111 of the Act, but that a prompt effort would be made to obtain this information through the available discovery procedures.

Arguments Presented bt the Parties

In its complaint filed in Docket No, PENN 84-158-C, the complainant states that it "anticipates that the final results of **MSHA's** inspections and investigation will reveal that the conditions which led to the issuance of the imminent danger order of February 16, 1984, were caused by the operator's failure to comply with mandatory safety standards." Complainant seeks compensation under section 111 of the Act for each of the miners idled as a result of this order, up to one week's compensation at his or her regular rate of pay. Complainant also seeks interest at 20% per annum, and reimbursement for attorney fees in connection with the claimed compensation.

In its answer to the complaint, the respondent denies that the conditions which led to the issuance of the imminent danger order of February 16, 1984, were caused by the operator's failure to comply with mandatory safety standards. Respondent also denies that the idled miners are entitled to the claimed compensation, and asserts that the complainant has no right to obtain reimbursement for attorney's fees.

In support of its summary decision motion, the respondent asserts that its exhibits demonstrate that the miners who seek a week's compensation were idled by the section 103(j) order, and therefore cannot rely on this order in seeking a week's compensation because the relevant provision in section 111 of the Act makes that remedy available only when miners are idled by certain orders issued pursuant to sections 104 and 107, and not pursuant to section 103.

Although recognizing that MSHA subsequently issued a section 107(a) order, the respondent maintains that this order cannot trigger a week's compensation because it had no idling effect. Respondent points out that by the time MSHA issued the 107(a) order, the miners had already been idled by the 103(j) order, which had closed the entire mine. Respondent concludes that the 107(a) order closed no additional areas or operations and therefore had no effect on the work status of the miners.

Respondent maintains that the pleadings also demonstrate that the second condition found in section 111 of the Act for obtaining one week's compensation has not been satisfied in that the 107(a) order on which the complainant relies does not charge the respondent with "a failure of the operator to comply with any mandatory health or safety standards," nor does the order even hint at any such violation. Respondent also points out that the 103(j) and 103(k) orders likewise show no hint of any violations. Respondent cites a case interpreting section 111 and its predecessor, section 110 of the Federal Coal Mine Health and Safety Act, which it claims held that whether miners are entitled to a week's compensation must be determined by the text of the order. E.g., UMWA, Local 1993 v. Consolidation Coal Co., 8 IBMA 1 (1977) (compensation must be determined "under terms of the closure order as issued").

In support of its opposition to the summary decision motion, the complainant maintains that the fact that the MSHA inspector did not allege a violation of a particular health or safety standard at the time he issued the section 107(a) order should not, in this case, preclude the miners from obtaining a week's compensation under section 111. Complainant argues that the inspector's main concern in issuing an imminent

danger order is to insure the protection of the miners by requiring their immediate removal, or, where miners are already withdrawn, to insure that they do not reenter the mine until the imminent danger has subsided. In the event of an explosion or accident, MSHA's typical response is to issue immediate orders giving themselves the ability to protect lives, avoid the destruction of evidence and, where necessary, supervise the rescue and recovery efforts. In many such cases, asserts the complainant, the conditions that existed at the time of the explosion, and which may have contributed to it, will not be determined until after an investigation. Although orders are issued, and miners are idled at the time the explosion occurs, citations relating to the explosion are not issued until months later.

Complainant asserts that on many occasions, the inspectors will be able to readily determine that a violation of a mandatory health or safety standard caused the imminent danger, and will presumably cite the violation on the face of the order. In other situations like the instant proceeding, it may be difficult, if not impossible, for MSHA to determine the existence of violations at the time the order is issued. Complainant concludes that this should not deprive the miners of the compensation to which they would otherwise be entitled.

Complainant points to the fact that section 107(a) explicitly provides that the issuance of an imminent danger order does not preclude a subsequent citation under section 104 for the violations which precipitated the imminently dangerous condition. Complainant argues that in enacting section 107(a), Congress expressed its awareness that the causes of an explosion or other emergency conditions requiring the immediate withdrawal of miners from the mine might not become apparent until well after the closure order is issued. Complainant concludes that if a subsequent section 104 citation issued pursuant to section 107(a) does describe violations which caused the imminently dangerous condition, then the elements of section 111 have been satisfied and compensation should be awarded.

Complainant argues that since the explosion was the condition which prompted the issuance of the imminent danger order upon which the compensation claims are based, the miners should not be penalized because that explosion which prompted the issuance of the order also prevented MSHA from immediately determining which violations may have caused or contributed to the explosion. Complainant maintains that to deny miners compensation on this basis would serve to reward those operators who have allowed the most dangerous conditions to develop in their mines.

Complainant argues further that allowing a mine operator to escape liability under section 111 on the basis of the respondent's narrow and technical interpretation... would be contrary to the mandate of Congress that the Act be construed liberally to further its Primary Purpose, the protection of miners. Citing the legislative history of the Act, complainant asserts that the Congressional drafters of section 111 viewed it as "a remedial provision which also furnishes added incentive for the operator to comply with the law." Complainant concludes that requiring the respondent to pay up to one week's compensation in this Case best comports with the Congressional intent behind section 111.

In response to the respondent's arguments that the miners had already been idled by the section 103(k) order by the time the inspector issued the section 107(a) order, complainant asserts that it is well-settled that miners are considered idled, for purposes of section 111, by the issuance of a section 107(a) order, regardless of the fact that they may have been previously withdrawn from the mine, and regardless of whether the prior removal resulted from a voluntary action on the part of the operator or whether it resulted from the issuance of an earlier withdrawal order. UMWA District 31 v. Clinchfield Coal Co., 1 MSHC 1668 (1978); UMWA Local 22.14, District 5 v. Consolidation Coal Co., 1 MSHC 1674 (1978); Roscoe Page v. Valley Camp Coal Co., 1 MSHC 1394 (1976); and Peak Coal Co. v. Mineworkers, 1 MSHC 2220 (1979).

Finally, complainant argues that on the facts of the instant case, the condition that caused the idling of the miners was the explosion. Since the explosion is the same condition that led to the issuance of the section 107(a) imminent danger order, complainant concludes that it provides a nexus sufficient to justify compensation under section 111, and that if the violations had been issued simultaneously with the section 107(a) order, the idled miners would have been entitled to up to one week's compensation. Complainant concludes further that allowing an operator to escape liability in those situations where the violations leading to the order are detected after the order's issuance, removes a powerful incentive to comply with the law. Such an approach, maintains complainant, serves to reward those operators who, by their failure to comply with the law, create the most extreme forms of an imminently dangerous situation: an explosion leading to a shutdown of the entire mine.

In Docket No. PENN 84-159-C, the complainant asserts that the violations which led to the issuance of the 59 orders were independent and separate from any violations which may have contributed "to the events which closed the mine On February 16, 1984." Complainant also asserts that but for these violations, the mine would have reopened upon abatement of the violations, and that as a result of these violations the reopening of the mine was delayed by several weeks.

The respondent denies that any alleged violations which prompted the orders existed, and it asserts that it has filed Notice of Contests "over a majority of those orders," and that the contests are still pending.

The complainant maintains that in accordance with section 111 of the Act, each of the miners idled as a result of the 59 withdrawal orders issued during the inspection of the mine initiated on March 20, 1984, is entitled to up to one week's compensation at his or her regular rate of pay, such compensation being apart from and in addition to any compensation received under section 111, for the withdrawal order issued on February 16, 1984, pursuant to section 107(a) of the Act. The complainant also asserts that each miner idled by the orders is entitled to interest on the amount of compensation claimed at the rate of 20% per annum, and to reimbursement for the attorney's fees incurred in obtaining said compensation.

In support of its Motion for Summary Decision, the respondent asserts that section 111 of the Act makes it clear that the compensationsought by the complainant is available only if (1) the withdrawal order that idles the miners is issued under section 104 (30 U.S.C. § 814) or section 107 (30 U.S.C. § 817), and (2) the order is issued "for a failure of the operator to comply with any mandatory health or safety standards."

The respondent maintains that the pleadings and its exhibits demonstrate that the miners who seek a week's compensation were idled by the section 103 order issued on February 16, 1984, and that none of the 59 withdrawal orders issued between March 20 and April 16, 1984, had any idling effect due to the existence of the February 16, 1984, section 103(k) order. Respondent argues that the complainant cannot rely on this section 103 order in seeking a week's compensation because the relevant provision in section 111 of the Act makes that remedy available-only when miners are idled by certain orders issued pursuant to sections 104 and 107, and not pursuant to section 103, as was the case here.

~~The~~ respondent asserts further that the pleadings also demonstrate that the second condition found in section 111 for obtaining one week's compensation has not been satisfied in that the respondent has denied that violations existed which led to the issuance of the orders. Since it has contested a majority of the orders through the filing of Notices of Contests, which are still pending, the respondent concludes that the validity of the orders has not been finally determined and that the prerequisite for the award of one week's pay under section 111 has not been met.

In its opposition to the summary decision motion, complainant again reiterates that for purposes of section 111, miners are considered idled regardless of the fact that they may have been previously withdrawn from the mine. Complainant cites the same cases previously cited in &position to the motion filed in Docket No. PENN 84-158-C, in support of its arguments, including the previously cited legislative history references.

Complainant again reiterates that the explosion triggered the idling of the miners on February 16, 1984, and that but for the conditions which led to the issuance of the 59 withdrawal orders, the mine would have reopened in March 1984. Quoting from the Commission's decision in Mine Workers, District 17 v. Eastern Associated Coal Co., 2 MSHC 1296, 1298-1299 (1981), complainant asserts that because "withdrawal situations can arise involving ... complicated sequences of events or concurrent operations of causative factors," the nexus between a withdrawal order and the miners' idlement should be examined on a case-by-case basis. In support of this argument, complainant cites the following language from this case:

[W]here a work stoppage due to safety concerns precedes an order and is occasioned by the same exigent or emergency conditions leading to the order, compensation may be justified to effectuate those safety purposes. Id. at 1299.

Finally, complainant states that it is curious that the respondent should argue that because it denies having committed any of the violations which may have precipitated the issuance of the imminent danger order, summary decision should be awarded in its favor. Complainant's view is that this assertion by the respondent raises genuine issues of material fact, which, under the summary decision provisions of 29 C.F.R. § 2700.64(b)(1), precludes the granting of the motion.

Discussion

The first three sentences of § 111 of the Act provides in pertinent part as follows:

[1] 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. [2] 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. [3] If a coal or other mine or area of such mine is closed by an order issued under section 104 or section 107 of this title for a failure of the operator to comply with any mandatory health or safety standards, all miners who are idled due to such order shall be fully compensated after all interested parties are given an opportunity for a public hearing, which shall be expedited in such cases, and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser.

Section 103(j) provides:

In the event of any accident occurring in any coal or other mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a coal or other mine, where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activities in such mine.

Section 103(k) states:

In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in such mine or to recover the coal or other mine or return affected areas of such mine to normal.

Section 107(a) provides:

If, upon any inspection or investigation of a coal or other mine which is subject to this Act, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 104(c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions or practices which caused such imminent danger no longer exist. The issuance of an order under this subsection shall not preclude the issuance of a citation under section 104 or the proposing of a penalty under section 110.

The facts presented in the instant proceedings are similar to those presented in Local Union 1889, District 17, UMWA v. Westmoreland Coal Company, WEVA 81-256-D, summarily decided by Judge Steffey on April 28, 1982, 4 FMSHRC 773 (April 1982). An explosion occurred inside Westmoreland's mine early on the morning of November 7, 1980. When it became aware of this explosion, the company withdrew the miners working on the 12:01 a.m. to 8:00 a.m. shift. At 7:30 a.m., an MSHA inspector issued a § 103(j) withdrawal order. One half hour later, at 8:00 a.m., an inspector issued a § 107(a) imminent danger withdrawal order which stated:

All evidence indicates that an ignition of unknown sources has occurred and five employees cannot be accounted for.

On December 10, 1980, after rescue operations had been completed, both orders were modified to show that the area of the mine affected by the orders was limited to sealed portions of the mine, and the orders remained in effect. The miners who were withdrawn from the mine during the 12:01 a.m. to 8:00 a.m. shift on November 7, were paid their entire shift, and miners who were expected to work the November 7 day shift (8:00 a.m. to 4:00 p.m.), were paid four hours of compensation under section 111.

Following its investigation into the explosion, MSHA issued thirteen § 104(d)(2) orders to Westmoreland on July 15, 1982, and they were based on statements taken during the

investigation. Westmoreland contested all thirteen orders, and they were subsequently consolidated with several civil penalty proposals filed by MSHA, and assigned to Judge Steffey for adjudication. On May 4, 1983, Judge Steffey vacated all 13 orders on the ground that they were erroneously issued, but left intact the alleged violations for consideration on the merits in the civil penalty cases. Thereafter, on motion by the parties, Judge Steffey approved a settlement disposition of the cases on May 11, 1984, 6 FMSHRC 1267.

In its complaint filed with Judge Steffey, the Union alleged that the "imminent danger" that existed on November 7, and which led to the issuance of the two **orders, was** caused by Westmoreland's failure to comply with mandatory safety and health standards. Thus, under the third sentence of **§ 111**, the Union claimed that each miner was entitled to up to one week's compensation based on the imminent danger order. The Union subsequently filed an amended complaint seeking limited compensation for both the **§ 103(j)** and **§ 107(a)** orders under the first two sentences of **§ 111**, and repeated its original claim for a week's compensation under the third sentence of **§ 111**.

Judge Steffey ruled that the miners were entitled to compensation for the remainder of the shift on which the **§ 103(j)** order was issued and for four hours of the next working shift. He denied the Union's request for one week's compensation based on the **§ 107(a)** order because the order did not allege a violation of a mandatory health or safety standard. He also denied the Union's request to retain jurisdiction of the case until MSHA had completed its investigation of the explosion. The Union had apparently believed that upon completion of its investigation, MSHA would then terminate the **§ 107(a)** order either with or without modifying it to allege a violation of a mandatory health or safety standard.

On appeal, the Commission let stand Judge **Steffey's** rulings concerning the Union's claims to compensation concerning the **§ 103(j)** order, but vacated his order dismissing the Union's claim for a week's compensation and remanded the **case** with instructions to hold the record open as to this claim. In its remand decision, the Commission stated as follows at **5 FMSHRC 1413**, August 12, 1983:

We express no view about whether these thirteen 104(d) (2) orders or any later modification of the 107(a) Order may provide the basis for a week's compensation

under the third sentence of section 111. We also do not reach the legal arguments raised by Westmoreland concerning whether the imminent-danger order as issued must contain an allegation of a violation for purposes of section 111 compensation. All of these questions on the merits of the Union's claim are appropriate for resolution in the first instance by the judge.

* * *

*** The case is remanded to the judge with instructions to hold the record open as to the Union's claim for a week's compensation. The parties are free to submit any appropriate motions or showings. If the Union fails to make appropriate showings upon the completion of MSHA's investigation, Westmoreland may file an application for a show cause order to determine if the claim should be dismissed. The judge's resolutions of the Union's other claims are final, since no review was taken as to those aspects of his decision.

Following the Commission's remand, Judge Steffey issued a second summary decision on September 24, 1984. He denied the Union's claim for up to one week of compensation for the § 107(a) order on the ground that the miners were initially idled and withdrawn from the mine by the § 103(j) order and not by the § 107(a) order. Judge Steffey observed that the Union could not and did not establish that any miners were withdrawn or idled by a § 107(a) order, and at page 11 of his slip decision stated as follows:

Assuming that UMWA could show that miners were withdrawn by the § 107(a) order, MSHA has terminated the 107(a) order without modifying it in any way to reflect that the imminent danger occurred because of Westmoreland's failure to comply with any mandatory health and safety standards. Although MSHA's investigation resulted in the issuance of 13 withdrawal orders pursuant to § 104(d) of the Act, citing alleged violations of the mandatory health and safety standards, those orders cannot be said to allege violations

as part of an imminent-danger order because they could not have been issued in the first instance without a finding that the violations cited in the orders did not cause an imminent danger.

Findings and Conclusions

PENN 84-159-C

The facts here show that on February 16, 1984, after the explosion had occurred, the mine was shut down and the miners were idled by the issuance of the § 103(j) order which later that same day was modified to a § 103(k) order. Thus, the effect of these two initial orders was to idle all miners scheduled to work at the mine. Later that same day, a § 107(a) imminent danger order was issued, and it was obviously intended to maintain the status quo and to prohibit anyone from entering the mine until it could be examined to determine whether it was safe. The mine remained idle until April 17, 1984, when according to the complainant, general work and limited production of coal resumed. During the interim, from the date of the explosion until it was reopened, MSHA had control of the mine and was conducting an investigation of the explosion, as well as a mine inspection which began on or about March 20, 1984. During the course of that inspection, MSHA issued 59 § 104(d) (1), withdrawal orders, and the record reflects that they were all issued during the period March 20 to 27, 1984.

Complainant asserts that the violations which led to the issuance of the 59 withdrawal orders "were independent and separate from any violations which may have contributed to the events which closed the mine on February 16, 1984," and that but for the conditions that led to the issuance of the **59 orders**, the mine would have reopened in March. Complainant concludes **that** since these 59 orders closed the mine for several more weeks, the idled miners are entitled to compensation under § 111.

After careful review of all of the arguments presented by the parties in support of their respective positions, I conclude and find that for purposes of compensation due under § 111 of the Act, the miners in question were idled by the issuance of the § 103 and § 107 orders on February 16, 1984. The 59 § 104(d) orders were issued over a month later, and at that time the mine was still closed, and the miners were still idled by the previously issued

orders. I take note of the fact that some of the orders affected only equipment, one cited an unsanitary toilet, and all of them indicated that "no area" of the mine was affected. This notation is obviously due to the fact that the mine had already been idled by the § 103 and § 107 orders. Even if I were to accept the complainant's assertion that the mine would have reopened had the 59 orders not issued, compensation for one week's pay still would not lie because the previously issued § 103 orders idled the mine, and it stayed in that posture until it reopened. Section 111 simply does not provide compensation for one week's pay for orders issued pursuant to § 103. The third sentence of § 111 makes it clear that the compensation sought is only provided in the event of closure orders pursuant to § 104 and § 107 for failure to comply with any mandatory health or safety standards. Here, the mine had been idled by § 103 orders for at least thirty days before the § 104 orders issued. The question of compensation rights pursuant to the § 107(a) order is the subject of Docket PENN 84-15-8-C, and my findings and conclusions follow below.

In view of the foregoing findings and conclusions, I conclude and find that the miners **are not** entitled to one week's compensation because of the issuance of the 59 § 104(d) orders, and the complainant's arguments in this regard ARE REJECTED. Respondent's Motion for Summary Decision IS GRANTED.

PENN 84-158-C .

In this case, the complainant maintains that the miners were idled by the explosion which occurred on February 16, 1984, and that the § 107(a) order was issued because of that explosion. Recognizing the fact that the inspector did not cite any violations of mandatory safety or health standards when he issued the § 107(a) order, the complainant nonetheless argues that this should not preclude the miners from receiving a week's compensation. For the reasons which follow, the complainant's arguments ARE REJECTED.

The third sentence of § 111 of the Act makes it clear that miners cannot be awarded one week's pay for the issuance of a § 107(a) order unless that order was issued for a violation of a mandatory standard. In short, the condition precedent for the awarding of a week's compensation in these circumstances is that the mine is idled by the issuance of a § 107(a) order which cites a violation. On the facts of this case, neither condition is present. At the time the § 107(a) order was issued, the mine had already been idled by the § 103 order, and the order, on its face, cited no violations of any mandatory standards.


While I agree with the complainant's assertion that the legislative history of the Act recognizes that § 111 was viewed as a remedial provision which also furnishes added incentive for compliance by a mine operator, complainant would have me ignore the plain wording of the statute, or in the alternative, rewrite it. This I decline to do. Further, I take note of the fact that the legislative history of § 111 indicates that it is not intended to be a punitive provision. Congress obviously intended limited compensation for miners idled pursuant to the types of orders covered by this section of the Act, and I find nothing in the legislative history to support any notion that Congress intended a mine operator to generally guarantee salary compensation for mines which may be idled due to no fault of the miner.

In view of the foregoing, I conclude and find that the miners are not entitled to a week's compensation because of the issuance of the § 107(a) order. Accordingly, the respondent's Motion for Summary Decision IS GRANTED.

Additional Rulings

1. The complainant's suggestion that these dockets are **not** ripe for summary decision because the 59 withdrawal orders have as yet to be litigated IS REJECTED. The parties are in agreement as to the essential facts in these dockets, and I conclude that respondent is entitled to relief as a matter of law. Further, the facts here show that the mine was reopened on April 16, 1984, and production resumed. The complainant's assertion that the "conditions" which led to the issuance of the § 107(a) imminent danger order on February 16, 1984, were caused by the respondent's failure to comply with mandatory standards is simply not so. The § 107(a) order was obviously issued as yet another means by MSHA to insure its control over the scene of the explosion and to maintain the status quo.

2. Complainant's claims for attorney's fees ARE DENIED.


George A. Koutras
Administrative Law Judge

Distribution:

Joseph T. Kosek, Jr., Esq., Greenwich Collieries,
Division of Pennsylvania Mines Corp., P.O. Box 367,
Ebensburg, PA 15931 (Certified Mail)

Joyce A. Hanula, Legal Assistant, Earl R. Pfeffer, Esq.,
United Mine Workers of America, 900 15th St., N.W.,
Washington, DC 20005 (Certified Mail)

/slk

2479