

CCASE:
EMERY MINING V. SOL (MSHA)
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19890127
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

EMERY MINING CORPORATION
AND/OR UTAH POWER & LIGHT
COMPANY,

CONTESTANTS

v.

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

AND

UNITED MINE WORKERS OF
AMERICA, (UMWA),
INTERVENOR

CONTEST PROCEEDINGS

Docket No. WEST 87-130-R
Citation No. 2844485; 3/24/87

Docket No. WEST 87-131-R
Order No. 2844486; 3/24/87

Docket No. WEST 87-132-R
Order No. 2844488; 3/24/87

Docket No. WEST 87-133-R
Order No. 2844489; 3/24/87

Docket No. WEST 87-134-R
Citation No. 2844490; 3/24/87

Docket No. WEST 87-135-R
Citation No. 2844491; 3/24/87

Docket No. WEST 87-136-R
Citation No. 2844492; 3/24/87

Docket No. WEST 87-137-R
Citation No. 2844493; 3/24/87

Docket No. WEST 87-144-R
Order No. 2844795; 3/24/87

Docket No. WEST 87-145-R
Order No. 2844796; 3/24/87

Docket No. WEST 87-146-R
Order No. 2844798; 3/24/87

Docket No. WEST 87-147-R
Order No. 2844800; 3/24/87

Docket No. WEST 87-150-R
Order No. 2844805; 3/24/87

Docket No. WEST 87-152-R
Order No. 2844807; 3/24/87

Docket No. WEST 87-153-R
Order No. 2844808; 3/24/87

Docket No. WEST 87-155-R
Citation No. 2844811; 3/24/87

Docket No. WEST 87-156-R
Order No. 2844813; 3/24/87

Docket No. WEST 87-157-R
Order No. 2844815; 3/24/87

Docket No. WEST 87-158-R
Citation No. 2844816; 3/24/87

Docket No. WEST 87-159-R
Citation No. 2844817; 3/24/87

Docket No. WEST 87-160-R
Order No. 2844822; 3/24/87

Docket No. WEST 87-161-R
Order No. 2844823; 3/24/87

Docket No. WEST 87-163-R
Citation No. 2844826; 3/24/87

Docket No. WEST 87-243-R
Citation No. 2844828; 8/13/87

Docket No. WEST 87-244-R
Citation No. 2844830; 8/13/87

Docket No. WEST 87-245-R
Citation No. 2844831; 8/13/87

Docket No. WEST 87-246-R
Citation No. 2844832; 8/13/87

Docket No. WEST 87-247-R
Citation No. 2844833; 8/13/87

Docket No. WEST 87-248-R
Citation No. 2844835; 8/13/87

Docket No. WEST 87-249-R
Citation No. 2844837; 8/13/87

Wilberg Mine
Mine I.D. No. 42-00080

CIVIL PENALTY PROCEEDINGS

Docket No. WEST 87-208
A.C. No. 42-00080-03578

Docket No. WEST 87-209
A.C. No. 42-00080-03579

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

v.

EMERY MINING CORPORATION, AND

ITS SUCCESSOR-IN-INTEREST
UTAH POWER & LIGHT COMPANY,
MINING DIV.,
RESPONDENT

Docket No. WEST 88-25
A.C. No. 42-00080-03584
Wilberg Mine

AND

UNITED MINE WORKERS OF
AMERICA (UMWA),
INTERVENOR

ORDER

1. On August 30, 1988, the undersigned Judge issued an order granting the petition of Utah Power and Light Company ("UP&L") to vacate 30 modified citations and orders to the extent that they named UP&L as a party.

2. On November 19, 1988, the Secretary of Labor (Secretary) filed a petition for interlocutory review of said order.

3. On December 5, 1988, UP&L filed in opposition to the Secretary's petition for interlocutory review, arguing, among other things, that the subject order was not interlocutory but rather a final order, reviewable only upon the filing of a petition for discretionary review in accordance with 30 U.S.C. 823(d)(2)(A)(i) and Commission Procedural Rule 70, 29 C.F.R. 2700.70.

4. On December 19, 1988, the Secretary filed a reply to UP&L's opposition, arguing that the subject order was not a final decision because the requirements of Rule 54(b) of the Federal Rules of Civil Procedure were not met. Specifically the Secretary stated that:

The August 30 Order contains no express determination that there is no reason for delay or express direction for the entry of final judgment as to Utah Power and Light.

5. On January 10, 1989, the Commission granted the Secretary's petition for interlocutory review "for the limited purpose of remanding this matter to the administrative law judge for an expeditious determination of whether a certification of finality in accordance with Rule 54(b) is appropriate."

6. After the above order of remand was received the presiding judge granted the parties an opportunity¹ to state their position on the issues involved in said order.

7. Emery Mining Corporation (Emery), and Intervenor did not file any statements. On January 24, 1989, the Secretary filed a statement of her position and further incorporated a copy of her reply to UP&L filed before the Commission. UP&L filed a response on January 27, 1989.

Basically, the Secretary contends that the order of August 30, 1988 was interlocutory and not a final decision. In the alternative, the Secretary states that if the order of August 30, 1988 is certified as final, then 30 days from such certification should be provided in order to afford an opportunity for Commission review.

UP&L states for its part that a Rule 54(b) certificate is not necessary and, in the alternative it argues certification of the August 30, 1988 order may be contrary to the principles of judicial economy.

Discussion

In its order of remand and in considering Rule 54(b) of the Federal Rules of Civil Procedure, the Commission concurred with

