

CCASE:  
CONSOLIDATION COAL V. SOL,  
SOL V. CONSOLIDATION COAL  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
February 14, 1990

CONSOLIDATION COAL COMPANY,  
Contestant

v.

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

CONTEST PROCEEDINGS

Docket No. WEvA 89-234-R  
Citation No. 3114001; 5/31/89

Docket No. WEVA 89-235-R  
Citation No. 3114002; 5/31/89

Docket No. WEVA 89-236-R  
Citation No. 3114003; 5/31/89

Docket No. WEVA 89-237-R  
Citation No. 3114004; 5/31/89

Docket No. WEVA 89-238-R  
Citation No. 3103921; 6/1/89

Docket No. WEVA 89-239-R  
Citation No. 3103922; 6/1/89

Docket No. WEVA 89-240-R  
Citation No. 3103923; 6/1/89

Docket No. WEVA 89-241-R  
Citation No. 3103924; 6/1/89

Docket No. WEVA 89-242-R  
Citation No. 3103925; 6/1/89

Docket No. WEVA 89-243-R  
Citation No. 3103926; 6/1/89

Docket No. WEVA 89-244-R  
Citation No. 3103927; 6/1/89

Docket No. WEVA 89-245-R  
Citation No. 3103928; 6/1/89

Blacksville No. 1 Mine

Mine ID 46-01867

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SECRETARY OF LABOR, CIVIL PENALTY PROCEEDINGS  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA), Docket No. WEVA 90-3  
Petitioner A. C. No. 46-01867 03815

v. Blacksville No. 1 Mine

CONSOLIDATION COAL COMPANY, Docket No. WEVA 90-8  
Respondent A. C. No. 46-01318-03901

Robinson Run No. 95

ORDER DENYING CERTIFICATION

The operator now has filed a motion to certify for interlocutory appeal the questions decided in my order dated January 24, 1990, denying its motion to dismiss.

Interlocutory review, including certification of interlocutory rulings by an Administrative Law Judge, is governed by section 2700.74 of Commission regulations. 29 C.F.R. 2700.74. The regulations follow much of 29 U.S.C. 1292(b) which concerns interlocutory appeals in the Federal Courts. At the outset, it must be noted that both under the Commission regulations and the Federal statute interlocutory appeals are a matter of discretion and not of right. Only in exceptional cases are such appeals to be allowed. *Kraus v. Board of County Road Commissioners*, 364 F.2d 919 (6th Cir. 1966).

After a careful review of this matter, I conclude that certification of my prior rulings would not be appropriate. One of the standards by which allowance of interlocutory appeals is measured is the material advancement of final disposition. If this case proceeds along its normal course without an appeal, a lengthy and expensive hearing will not be required. On the contrary, the operator's reply brief filed on January 11, 1990, represents that the factual issues are relatively simple and perhaps not in dispute at all. (Operator's reply brief p. 15). Likewise, the Solicitor's opposition to the operator's present motion advises that limited discovery is possible and that thereafter the Secretary is amenable to factual stipulations. Accordingly, leaving this case on its present track should, with the cooperation of the parties, result in an expeditious final decision at the trial level. Cf. *U.S. v. Bear Marine Services*, 696 F.2d 1117 (5th Cir. 1983).

Conversely, ultimate disposition would not be accelerated by allowing an interlocutory appeal at this time. The Commission would have to familiarize itself with the many pleadings and briefs already filed and passed upon by this Judge. Oral argument before the Commission would consume further time. And if

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the Commission agreed with my order denying the operator's motion to dismiss, the case would then be returned to me after a substantial delay. In other words, all the evils of piecemeal litigation would be realized.

Finally, many cases that come before this Commission and its Judges involve challenges to the validity of the Secretary of Labor's regulations. If the questions presented here were certified and accepted for interlocutory appeal, there would be no reason why a myriad of other such cases should not be similarly appealed. In no time the Commission would become bogged down in a vast array of non-final cases, resulting in a prolonged and attenuated adjudicatory process. The Commission should not be so burdened.

In light of the foregoing, the motion to certify is DENIED.

The directives in my order of January 24, 1990 remain in effect and I look forward to seeing counsel on March 13, 1990.

Paul Merlin  
Chief Administrative Law Judge

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