

CCASE:
SOL (MSHA) v. CANYON COUNTRY ENTERPRISES
DDATE:
19910122
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
The Federal Building
Room 280, 1244 Speer Boulevard
Denver, CO 80204

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
CLYDE C. COLE,
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. WEST 90-165-DM
MD 89-24

Soledad Canyon Mine

v.

CANYON COUNTRY ENTERPRISES,
D/B/A CURTIS SAND & GRAVEL,
CORPORATION,
RESPONDENT

DECISION

Before: Judge Lasher

On December 14, 1990, the Complainant (Secretary of Labor on behalf of Clyde C. Cole), and Respondent filed a "Stipulation for Dismissal" indicating that, discovery having been completed, both parties agree that this matter should be dismissed with prejudice as far as the Secretary of Labor is concerned. These two parties also agree, among other things, that the dismissal of this proceeding shall not be construed to create or abrogate any rights beyond those available to Clyde C. Cole under the Act at the time of the filing of this action.

Individual Complainant, Mr. Cole, has substituted David P. Koppelman, Esq., International Union of Operating Engineers, Local 12, AFL-CIO, as his attorney by a pleading filed on January 17, 1991. This Union had previously "intervened" for this purpose in this proceeding by a pleading received June 9, 1990. Through Attorney Koppelman, Complainant opposes the Secretary of Labor's request for dismissal of this proceeding. It appears that Complainant Cole wishes to continue this proceeding originally brought by the Secretary of Labor by substituting himself as Complainant. However, Section 105(c) of the Act apparently contemplates two situations: (a) where the Secretary brings the action under Section 105(c)(2), and (b) where, if the Secretary "upon investigation" declines to prosecute, the action is brought under (c)(3) by the individual complainant in his own behalf. Here, after proceeding to prosecute under 105(c)(2), the Secretary, upon further investigation, has determined a violation did not occur and seeks dismissal of this (c)(2) action. Such rights as Mr. Cole has would appear to be provided in Section 105(c)(3) of the Act.

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I do not rule on or delineate such at this point. The request of the Secretary of Labor is found authorized and dismissal of this proceeding is found warranted, since the party charged with the responsibility bringing the prosecution (MSHA) no longer feels a violation was committed by Respondent.

ORDER DISMISSING PROCEEDING

The motion of the Secretary of Labor to withdraw her complaint is GRANTED and, pursuant to the provision of Commission Procedural Rule 11 (29 C.F.R. 2700.11), this proceeding is DISMISSED with prejudice to the Secretary of Labor to renew any further prosecution as provided in Paragraph III of the aforesaid Stipulation for Dismissal between the Secretary of Labor and Respondent.

Michael A. Lasher, Jr.
Administrative Law Judge