

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

September 5, 1991

BENNY JOHNSON,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. KENT 91-934-R
v.	:	through KENT 91-936-R
	:	
	:	Citation No. 9858643; 4/4/91
SECRETARY OF LABOR,	:	through 9858645; 4/4/91
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Island Creek Coal-W Kentucky
Respondent	:	
	:	Hamilton No. 2 Mine
	:	
	:	Mine ID 15-02706

DECISION

Before: Judge Merlin

These cases are notices of contest filed under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(d), seeking to challenge the Secretary's proposed revocation of contestant's status as a person certified by the Secretary of Labor to take respirable dust samples. Each notice of contest relates to a citation issued by the Secretary to contestant's operator, Island Creek Coal Company, for allegedly tampering with a dust cassette. The Secretary has filed a motion to dismiss which contestant has opposed, stating he relies upon the brief submitted on his behalf in Docket Nos. KENT 91-937-R through KENT 91-955-R.

On September 4, 1991, I held in Roberts v. Secretary Docket No. KENT 91-896-R, that an individual such as contestant has rights arising from his certification which are entitled to due process protections. However, I further held that I had no jurisdiction to entertain an independent suit by such a miner or to grant him relief. The issues in Roberts are the same as those presented here and therefore, that decision is dispositive of this matter.

As contestant's brief in KENT 91-937-R etc., points out, the operator here, unlike the operator in Roberts, has filed notices of contest challenging the citations issued to it. Contestant may wish to consider the possibility of becoming a party to the operator's suits. (See Footnote 1, page 3 of the Roberts decision.)

In light of the foregoing, it is ORDERED that these cases be and are hereby DISMISSED.

A handwritten signature in cursive script that reads "Paul Merlin". The signature is written in black ink and is centered on the page.

Paul Merlin
Chief Administrative Law Judge

Enclosure

Distribution:

Marcus P. McGraw, Esq., Greenebaum, Doll & McDonald, 1400 Vine Center Tower, P. O. Box 1808, Lexington, KY 40593-1637 (Certified Mail)

James B. Crawford, Esq., Office of the Solicitor, U. S. Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203 (Certified Mail)

/gl