

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

September 5, 1991

PATRICK HENRY FLUTY, : CONTEST PROCEEDINGS
Contestant :
 :
v. : Docket No. WEVA 91-1193-R
 : through WEVA 91-1218-R
 :
 : Citation No. 9862149: 4/4/91
SECRETARY OF LABOR, : through 9862174: 4/4/91
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Mine No. 1
Respondent :
 : Mine ID No. 46-05978

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 a 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 to contestant's operator, Eastern Mingo Coal Company, for allegedly tampering with a dust cassette. The notices of contest set forth that contestant is the operator's safety supervisor. The Secretary's motion to dismiss advises that the operator has contested these citations.

By letter received August 23, 1991, contestant's counsel advises that contestant has no objection to the decision in Roberts v. Secretary, Docket No. KENT 91-896-R, where oral argument was heard on August 22, 1991, being dispositive of this matter. By letter dated August 23, 1991, the Secretary similarly states that the decision in Roberts is controlling.

On September 4, 1991, I held in Roberts that an individual such as contestant has rights arising from his certification which are entitled to due process protection. However, I further held that I had no jurisdiction to entertain the suit or grant relief. Those conclusions obtain here as well.

As noted above, the operator here, unlike the operator in Roberts, has filed notices of contest. Contestant here may wish to consider the possibility of seeking to become a party in the operator's suit. (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 black ink that reads "Paul Merlin". The signature is fluid and cursive, with a large initial "P" and "M".

Paul Merlin
Chief Administrative Law Judge

Enclosure

Distribution:

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