

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

September 5, 1991

KEVIN TUSTIN, Contestant
v.
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA), Respondent

: CONTEST PROCEEDINGS
:
: Docket No. WEVA 91-1436-R
: through WEVA 91-1447-R
:
: Citation No. 9861681; 4/4/91
: through 9861692: 4/4/91
:
: Docket No. WEVA 91-1448-R
: through WEVA 91-1493-R
:
: Citation No. 98616943' 4/4/91
: through 9861739; 4/4/91
:
: Consolidation Coal Company
:
: Blacksville No. 2 Mine
:
: Mine ID 46-01968

DECISION

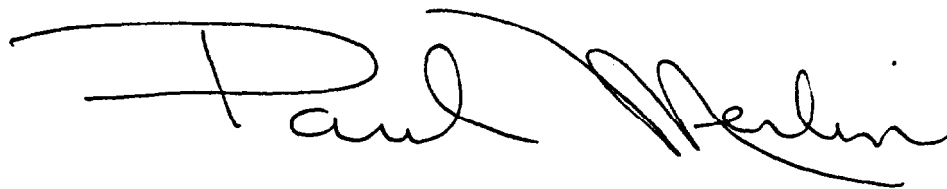
Before: Judge Merlin

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. § 818(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, Consolidation Coal Company, for allegedly tampering with a dust cassette. The Secretary has filed a motion to dismiss and contestant has submitted a memorandum in opposition.

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 memorandum 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 in 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 black ink that reads "Paul Merlin". The signature is fluid and cursive, with a long horizontal stroke at the beginning and a large, sweeping flourish at the end.

Paul Merlin
Chief Administrative Law Judge

Distribution:

Robert B. Allen, Esq., King, Betts & Allen, 1300 Charleston
National Plaza, P. O. Box 3394, Charleston, WV 25333-3394
(Certified Mail)

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

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