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STEVEN BROWN V. SUNSHINE MINING
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

STEVEN BROWN FOR UNITED
STEELWORKERS OF AMERICA,
DISTRICT 38, SUBDISTRICT 7,
APPLICANTS

COMPENSATION PROCEEDING
Docket No. WEST 91-196-CM
Sunshine Mine

v.

SUNSHINE MINING COMPANY,
RESPONDENT

DECISION

Before: Judge Morris

Complainants seek relief under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the "Act").

The complaint states as follows:

Contract miners at the Kellogg operation are paid on an agreed to incentive basis in relation to the work done. This rate usually exceeds the hourly rate of a grade 7 miner. In completing the required MSHA safety training, these miners are deprived of the opportunity to earn contract rate. The employer insists that they are only required to pay these miners the days pay rate of grade 7 for time spent in MSHA safety training. The Union does not agree. Since the normal rate of pay for the miners in question is based on their contract, they should receive compensation at that rate when training.

In support of their position Complainants submitted (Exhibit B), an employment agreement between the United Steel Workers of America and Sunshine.

Complainants state that "Gypo" miners at Sunshine are paid by a complicated incentive system. Basically the system is based on the amount of work done by the individual miner. "Gypo miners are disciplined by the Company for failure to meet what the Company considers the reasonable incentive production level."

The crux of Complainants' case is that the normal rate of pay for a "Gypo" miner is his incentive rate of pay. Therefore, the miners should be paid at the incentive rate when undergoing mandatory health and safety training.

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In addition to the captioned case, Complainants have also filed a grievance under the terms of their employment contract with Sunshine.

In support of their position, Complainants further rely on Section 115(b)1 of the Mine Act as well as 30 C.F.R. Part 48,2 relating to the training and retraining of miners.

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Sunshine asserts miners are paid their normal rate of pay for mandatory health and safety training. The operator claims no incentive pay is earned or due for time spent in such training.

Specifically, Sunshine claims there is only one rate of pay which is the rate set by the labor management agreement. The agreement states as follows:

ARTICLE IV

Classification and Rates of Pay

4.1 All job classifications of work coming under the jurisdiction of the Union and the rates of pay applicable thereto shall be set forth in schedule "A" which is attached hereto and by reference made a part hereof. The said schedule "A" shall set forth all classifications coming under the terms of this Agreement and explains other forms of compensation such as profit sharing and common stock distribution. (emphasis added).

Schedule "A" to the agreement states:

The "wage rates" for classifications of employees represented by the United Steelworkers of America at the Kellogg Operations will be the rates shown on the Wage Table. (emphasis added).

Sunshine further relies on the Grievance and Arbitration portion of collective bargaining agreement which provides as follows:

ARTICLE XV

Grievance and Arbitration

Any question or dispute concerning compliance by the Company with, or interpretation or application of this Agreement, memoranda or supplemental agreements concerning wages, hours and other terms and conditions of employment, shall be treated as a claimed grievance in the sequence outlined as grievance procedure until settled. Should an agreed settlement be lacking

at the final stage of the grievance procedure, said claimed grievance may then be referred by the grievant's representative to arbitration. The arbitrator's decisions made within the scope of the submission and authority of the arbitrator shall be final and binding on all parties.

Inasmuch as no issue of fact was involved, the Judge requested the parties to submit authorities in support of their positions. After review, the Judge indicated he would enter a decision in the matter.

Discussion

There are no MSHA enforcement documents involved in this case. Further, I am unable to find any portion of the Mine Act that vests jurisdiction in the Commission to determine the issues presented here.

Further, it appears the Union seems to have a determination of what constitutes the "normal rate of compensation" under the collective bargaining agreement.

The Union's claim is over "wages, hours and other terms and conditions of employment." Under those circumstances, the parties must honor the arbitration provisions. Such provisions will be enforced by the courts. Sams v. United Food & Commercial Workers Union 835 F.2d 848 (11th Cir. 1988); Hillard v. Dobelman, 774 F.2d 886 (8th Cir. 1985).

The Judge raised the issue of the Commission's jurisdiction and Complainants state they don't know how the issue arrived before the Commission. In particular, Complainants state they filed a complaint with the MSHA Field Office in Coeur d'Alene, Idaho.

Complainants position may be well taken. Section 48.32 outlines an appeals procedure from a decision by MSHA's District Manager.

Since the Mine Act fails to vest jurisdiction in the Commission, this case is DISMISSED.

John J. Morris
Administrative Law Judge

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FOOTNOTES START HERE

1. The cited portion of the Act reads as follows:

"(b) Any health and safety training provided under subsection (a) shall be provided during normal working hours. Miners shall be paid at their normal rate of compensation while they take such training, and new miners shall be paid at their starting wage rate when they take the new miner training. If such training shall be given at a location other than the normal place of work, miners shall also be compensated for the additional

costs they may incur in attending such training sessions.

2. Complainants rely on the following regulations:

30 C.F.R. 48.10

Training shall be conducted during normal working hours; miners attending such training shall receive the rate of pay as provided in 48.2(d) (Definition of normal working hours) of this subpart A.

30 C.F.R. 48.2(d)

(d) "Normal working hours" means a period of time during which a miner is otherwise scheduled to work. This definition does not preclude scheduling training classes on the sixth or seventh working day if such a work schedule has been established for a sufficient period of time to be accepted as the operator's common practice. Miners shall be paid at a rate of pay which shall correspond to the rate of pay they would have received had they been performing their normal work tasks.