CCASE:
MSHA V. PAUL SHIREL (PYRO MINING)
MSHA V. DONALD GUESS (PYRO MINING)
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SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	:	CIVIL PENALTY PROCEEDING Docket No. KENT 92-73 A.C. No. 15-13881-03792-A
v.	:	
PAUL SHIREL, employed by PYRO MINING COMPANY, Respondent	:	Pyro No. 9 Slope William Station
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	:	CIVIL PENALTY PROCEEDING Docket No. KENT 91-1340 A.C. No. 15-13881-03781-A
v.	:	
DONALD D. GUESS, employed PYRO MINING COMPANY, Respondent	:	Pyro No. 9 Slope William Station

DECISION

Appearances: Stephen D. Turow, Esquire, Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for Petitioner; Flem Gordon, Esquire, Madisonville, Kentucky, for Respondents

Before: Judge Melick

A bench decision was issued in the captioned cases at hearings on October 8, 1992, granting the Respondents' Motions for Summary Decision. That decision, with only non-substantive changes, is as follows:

> I will, as I said before, grant the Motions for Summary Decision as to both cases and dismiss both civil penalty proceedings, Docket Nos. KENT 92-73 and KENT 91-1340. These cases are before me upon the petitions for civil penalty which were filed by the Secretary of Labor against Paul Shirel and Donald Guess under Section 110(c) of the Federal Mine Safety and Health Act of 1977, [30 U.S.C. Section 801, et seq., the "Act"] charging Shirel and

Guess as agents of a corporate mine operator, namely Pyro Mining Company, with knowingly authorizing, ordering or carrying out violations by the named corporate mine operator.

Section 110(c) of the Act provides, in part, that whenever a corporate mine operator violates a mandatory health or safety standard any director, officer or agent of such a corporation who knowingly authorized, ordered or carried out such violation shall be subject to the same civil penalties, fines and imprisonment that may be imposed upon a person under subsections (a) and (b).

Under Commission Rule 64(b), motions for summary decision shall be granted only if the entire record, including the pleadings, depositions and affidavits, show that there is no genuine issue as to any material facts and that the moving party is entitled to summary decision as a matter of law.

As I have already stated, while the instant motions were filed untimely under Commission Rule 64(a), it makes little sense to proceed further on the merits when the motions would be dispositive of the cases. On September 23rd of this year, Respondents filed Motions for Summary Decision in each of these cases, asserting that, on the dates of the alleged violations, Pyro Mining Company was not in fact a corporate entity, but was a partnership, and that an essential ingredient of the charges could not therefore be sustained. In these proceedings, it is indeed undisputed that, on the dates of the violations at issue, Pyro Mining Company was a partnership recognized under the laws of Illinois and Kentucky and was not a corporation under any jurisdiction. It is also undisputed that Pyro Mining Company was the legally designated operator of the No. 9 Slope, William Station Mine at relevant times.

The Secretary alleges in her petitions in these cases that Shirel and Guess were employees of Pyro Mining Company, and as such were acting as agents of Pyro Mining Company as a corporate operator. Since it is indeed now undisputed that Pyro was not then a corporate operator and was not a corporation, but rather was a partnership, the allegations in these petitions cannot be sustained and the petitions must accordingly be dismissed.

I express no opinion here, and have no information, as to whether either or both of the Respondents could be charged under Section 110(c) as agents of one or both of the corporations making up the partnership Pyro Mining Company, for they in fact were not charged in these cases as agents of those corporations and there is no allegation that these corporations were in fact the operators of the Pyro No. 9, William Station Mine.

I should add that in reaching this decision, I have not disregarded the Secretary's argument that Pyro as a partnership was more closely akin to a traditional corporation than a true partnership, and that Congress intended that partnerships like Pyro should be considered to be corporate operators for purposes of Section 110(c) of the Act. However, I cannot make a finding contrary to the clear and unambiguous language of Section 110(c), and the language is indeed clear and unambiguous, that only agents of corporations and corporate operators are chargeable under Section 110(c).

The Secretary, in essence, would have me amend Section 110(c) to hold liable agents not only of corporate operators but also agents of partnerships composed of two corporations. An administrative law judge is certainly not in a position to make such an amendment and I am certainly bound by the plain, clear and unambiguous language of the statute.

I might add that the Secretary's arguments do tend to point out that Congress may wish to revisit the language of Section 110(c) in light of this particular case and, indeed, in light of the Richardson case and other decisions which suggest that agents of large operators other than corporate operators should be included within the scope of Section 110(c).

For the above reasons, however, I am granting the Motions for Summary Decision. These proceedings are concluded. Thank you.

~1829

ORDER

The captioned civil penalty proceedings are hereby DISMISSED.

Gary Melick
Administrative Law Judge
703-756-6261

Distribution:

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