

CCASE:
SOL (MSHA) V. LITTLE ROCK QUARRY
DDATE:
19930416
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
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April 16, 1993

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 92-202-M
Petitioner	:	A.C. No. 03-01475-05526
	:	
	:	Docket No. CENT 92-204-M
v.	:	A.C. No. 03-01475-05528
	:	
	:	Docket No. CENT 92-205-M
LITTLE ROCK QUARRY COMPANY,	:	A.C. No. 03-01475-05529
INCORPORATED,	:	
Respondent	:	De Roche Creek Quarry

DECISION ON REMAND

Before: Judge Lasher

On January 15, 1993, I issued a Decision and Order of Dismissal as a result of the Secretary's failure to show good cause for failure to comply with a prehearing order. A brief history of events is in order.

As the Commission noted in its remand of February 22, 1993, the Secretary requested reconsideration on January 27, 1993, indicating that the parties had "informally settled" the case on January 12, 1993, three days prior to the Dismissal Order. (Footnote 1) The Commission determined that my jurisdiction terminated with the issuance of the Dismissal Order on January 15, 1993, and treated the Secretary's Motion for Reconsideration as a timely petition for discretionary review thereof, and to afford the Secretary the opportunity to present his position to me, vacated the Dismissal Order, and remanded the matter for such action as I deem appropriate. In compliance therewith, by Order dated March 2, 1993, I gave the Secretary until April 2, 1993, to file his position in writing with me.

1 By Order dated February 10, 1993, I did deny the Secretary's motion for reconsideration noting that at the time the parties informally settled the matter on January 12, 1993, it was unknown to Respondent that the Secretary had not complied with and Order to Show Cause I had issued, nor with a subsequent Order. Respondent indicates that had it been in possession of all the facts, it would in all probability have declined the Secretary's offer of settlement, an allegation which I noted in My Order Denying Motion for Reconsideration.

On April 1, 1993, the Secretary filed a "Response to the Order of March 2, 1993, Related to the Dismissal for Want of Prosecution and Response to Respondent's Renewed Motion for Dismissal." In that it overlooks much of the history of non-compliance by Petitioner, including the fact that it was put on notice to take responsive action by written motions to dismiss for its non-compliance by Respondent on October 19, 1992, and November 13, 1992, a letter dated November 25, 1992, indicating Petitioner had not communicated with Respondent, and Orders of various sorts from me dated October 20, 1992, December 3, 1992, and December 11, 1992, this "Response" does not contain an accurate depiction of events which led to the dismissal of the three dockets in question. Further, Petitioner's explanation (Footnote 2) that it was a "scheduling oversight," etc., does not explain away the failure to discharge the responsibility raised by repeated prompting from both this Judge and Respondent over the period of time involved from the issuance of the pre-hearing order on September 14, 1992, to December 3, 1992, when the Order to Show Cause issued. (Footnote 3) In short, Petitioner did not establish good cause for its lengthy non-compliance even though repeatedly urged and prompted to do so. (Footnote 4)

Petitioner also argues that "... this case has been settled," and that Petitioner has not received any indication from Respondent that Respondent was not agreeable to the settlement proposal. This argument does not appear valid. As I previously pointed out, (Footnote 5)

2 In its Response to Order to Show Cause dated December 16, 1992.

3 As the Order to Show Cause indicated, Petitioner was required to show good cause at that "point in time" why it should not be deemed to have abandoned its prosecution of this matter. Petitioner's allegations in its April 1, 1993, Response regarding its compliance, which I do not concur in, are in any event untimely, and should have been made in response to the Order to Show Cause.

4 The importance to the Commission's ability to function and process proceedings to require at least minimal feedback from counsel was described in my Decision and Order Dismissing Proceeding and will not be repeated here. Nevertheless, it is believed the particular counsel involved is capable and conscientious and it is hoped that whatever circumstances were developing which led to the happenings here have been alleviated. The rights of the Respondent must also be considered.

5 Order Denying Motion for Reconsideration dated February 1993. Although my jurisdiction to issue such had terminated, this part of the reasoning therefrom appears applicable.

"In its Answer opposing Petitioner's Motion for Reconsideration, Respondent alleges:

9. Unknown to Respondent, however, at the time of such agreement to compromise, was the fact that Petitioner had not complied with the Order to Show Cause nor with the subsequent Order of 11 December 1992.
10. Superior knowledge was had by Petitioner on 11 January 1993 at the time of its telephone call to Respondent initiating its offer to compromise in the sum of \$760.00, that it had failed to comply with the Court's Order.
11. Had Respondent been in possession of such knowledge, it in all probability, would have declined Petitioner's offer"

Under the circumstances, it would be unreasonable to infer that the settlement, oral to begin with, would have proceeded had the facts and procedural posture of the case been known to Respondent.

I conclude that Petitioner's position lacks merit, such is DENIED, and my Decision and Order Dismissing Proceeding dated January 15, 1993, is AFFIRMED.

Michael A. Lasher, Jr.
Administrative Law Judge

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