

CCASE:
SOL (MSHA) V. EUGENE RUSSELL
DDATE:
19941020
TTEXT:

October 20, 1994

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 94-623-M
Petitioner	:	A.C. No. 45-03184-05528-A
	:	
v.	:	Docket No. WEST 94-624-M
	:	A. C. No. 45-03184-05529-A
EUGENE RUSSELL, ERVIN E.	:	
NICHOLS, JAMES M. DODD,	:	Docket No. WEST 94-625-M
REYNOLD E. CHANNER, AND	:	A. C. No. 45-03184-05530-A
SCOTT FURMAN EMPLOYED BY	:	
ECHO BAY MINERALS COMPANY,	:	Docket No. WEST 94-626-M
Respondents	:	A. C. No. 45-03184-05531-A
	:	
	:	Docket No. WEST 94-627-M
	:	A. C. No. 45-03184-05532-A
	:	
	:	Overlook Mine Site

ORDER

The above captioned cases are petitions for the assessment of civil penalties filed by the Secretary of Labor against the named individuals under section 110(c) of the Act. The related section 110(a) case is presently assigned to Administrative Law Judge John J. Morris.

On October 12, 1994, Judge Morris issued an order in the 110(a) case denying the operator's motion to dismiss the Secretary's penalty petition on the ground that it was untimely. Counsel for respondents who represents the operator in the 110(a) matter, has now filed a motion to dismiss the instant cases on the basis that they were not timely. In addition, by letter addressed to me dated October 18, 1994, counsel has requested that I rule on the merits of the dismissal motion before assigning the case. Counsel asserts that the findings in Judge Morris' Order may predispose him to deciding the timeliness issue against the individuals. On October 20, 1994, the Solicitor filed a letter objecting to counsel's request. Respondents' counsel submitted a further letter on October 20.

The request of counsel cannot be granted. As her brief demonstrates, the issue of untimeliness in these 110(c) cases raises matters that are separate and distinct from those that arose in the 110(a) action. The circumstances and questions presented with respect to the individuals are not the same as those previously considered by Judge Morris. Moreover, there is nothing in the judge's order dated October 12 which would disqualify him from ruling upon the motion in these cases. He made

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no determination regarding the status of the respondents, but merely pointed out that for purposes of deciding whether or not the operator had been prejudiced by delay, persons other than the deceased general mine foreman would be available to testify.

In light of the foregoing, counsel's request is DENIED. A separate assignment order will be issued.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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