

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Office of the Chief Administrative Law Judge
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February 21, 2024

GRIMES ROCK, INC.,
Contestant

v.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION, MSHA,
Respondent

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION, MSHA,
Petitioner

v.

GRIMES ROCK, INC.,
Respondent

CONTEST PROCEEDING

Docket No. WEST 2022-0334-RM
§104(b) Order No. 9619115; 08/21/2022

Mine: Grimes Rock, Inc.
Mine ID: 04-05432

CIVIL PENALTY PROCEEDINGS

Docket No. WEST 2023-0015-M
A.C. No. 04-05432-563106-01

Docket No. WEST 2023-0016-M
A.C. No. 04-05432-563106-02

Mine: Grimes Rock, Inc.

ORDER DENYING GRIMES ROCK’S REQUEST FOR STAY

These cases are before me upon a notice of contest filed by Grimes Rock, Inc. (“Grimes Rock”) and petitions for assessment of civil penalty filed by the Secretary of Labor (the “Secretary”), acting through the Mine Safety and Health Administration (“MSHA”), against Grimes Rock pursuant to sections 105 and 110 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 815 and 820 (the “Mine Act”).

On November 29, 2023, I lifted the stay in these matters and ordered the parties to confer regarding the possibility of settlement and, if settlement did not appear feasible, a timetable for submitting briefs or motions for summary decision. In response to that order, the Secretary notified the court that the parties were responding to written discovery and would confer with each other following that discovery to consider how to proceed in these cases. On December 13, I ordered the parties complete discovery as soon as possible and provide a status update to the court by January 31. On January 31 Grimes Rock submitted a Request for Stay.¹ The Secretary

¹ Grimes Rock’s filing was captioned as “Respondent Grimes Rock, Incorporated’s Status Report and Request for Stay Pending the United States Court of Appeal for the Ninth Circuit’s Ruling on Respondent’s Petition for Review of Commission’s Decision Dated November 28, 2023 in the Related Saldivar Case.” For purposes of this order, I refer to the filing as the “Request for Stay.”

opposed a stay in these cases. For reasons set forth below, Grimes Rock's request is **DENIED**.

The contest docket and two penalty dockets at issue in these proceedings involve two 104(a) citations and one 104(b) order that arise from Grimes Rock's alleged failure to comply with orders issued by former Commission Judge Miller in the temporary reinstatement proceeding of Sec'y of Labor on behalf of Saldivar v. Grimes Rock Inc. in docket number WEST 2021-0178-DM (hereinafter "Saldivar temporary reinstatement proceeding" or "Saldivar case"). Citation No. 9619114, issued under section 104(a) on August 15, 2022, alleges a violation of section 105(c) of the Mine Act because Grimes Rock failed to comply with Judge Miller's May 28, 2021 Order of Temporary Economic Reinstatement and June 17, 2022 Order Granting the Secretary's Motion to Enforce. Order No. 9619115, issued under section 104(b) on August 21, 2022, alleges that Grimes Rock continued to fail to comply with Judge Miller's orders by not making certain required payments. Finally, Citation No. 9619116, issued on August 22, 2022, under section 104(a), alleges that Grimes Rock violated section 104(b) when it continued to conduct work activities at the mine site despite not complying with Order No. 9619115.

On November 28, 2023, the Commission issued a decision in the Saldivar temporary reinstatement proceeding. 45 FMSHRC ___; 2023 WL 8714341 (Nov. 28, 2023).² On December 26, 2023, Grimes Rock appealed the Commission's decision to the Court of Appeals for Ninth Circuit ("Ninth Circuit") in Case No. 23-4418.

Grimes Rock raises two primary points in its Request for Stay. First, Grimes Rock argues that this court lacks jurisdiction in these matters because of its appeal of the Commission's decision in the Saldivar temporary reinstatement proceeding. Presently the Ninth Circuit has exclusive jurisdiction over the Saldivar case. Grimes Rock asserts that because the citations and order at issue in these proceedings are entirely dependent on the questions before the Ninth Circuit in the Saldivar case, the Ninth Circuit also has exclusive jurisdiction over these proceedings. As a result, this court "would and should . . . have authority to hear this matter" only after the Ninth Circuit rules on the issues before it in the Saldivar temporary reinstatement proceeding appeal. Grimes Rock Request for Stay 8.

Second, Grimes Rock argues that, even if this court concludes it has jurisdiction, the court should exercise its discretion to stay these cases until the Ninth Circuit issues its decision on the petition for review in the Saldivar temporary reinstatement proceeding. It asserts that the Ninth Circuit could conclude that the temporary reinstatement order was invalid, that the tolling motions Grimes Rock filed with the Commission in that case should have been granted, or that other errors were made in that proceeding that would invalidate Judge Miller's orders that formed the bases of the citations and order in the present proceedings. Grimes Rock also states that because the judge dismissed Saldivar's underlying discrimination case on June 17, 2022 (WEST 2021-0265-DM) which terminated the temporary reinstatement order well before MSHA issued the citations and order in dispute here, it is not clear what authority the Secretary was proceeding under when issuing them. Grimes Rock also questions the Secretary's authority to shut down the mine absent any "health" or "safety" concerns when she issued the section 104(b) order. Finally, Grimes Rock asserts that these cases should be stayed for the same reasons cited

² On January 4, 2024, the Commission remanded the Saldivar temporary reinstatement proceeding to this court. On February 6, 2024, I stayed that matter until further notice.

by this court in earlier orders staying these cases while the temporary reinstatement case was on appeal to the Commission. For these reasons, it maintains that this court should stay these cases until the Ninth Circuit has been given the opportunity to sort out these issues.

The Secretary argues that a stay of these matters is not appropriate because the temporary reinstatement order that Grimes Rock appealed to the Ninth Circuit has no legal relevance to these proceedings. At the time the Secretary took the enforcement actions at issue in these proceedings, the temporary reinstatement order was not stayed and Grimes Rock was obliged to comply with that order even while its appeal was pending before the Commission. In failing to comply with the unstayed order, Grimes Rock violated the Mine Act, regardless of whether it believed that order was incorrectly issued.

I find that this court presently has jurisdiction over the above captioned proceedings. These dockets were assigned to me on January 13, 2023. There is no question that these dockets are related to the Saldivar temporary reinstatement proceeding presently on appeal to the Ninth Circuit. However, these dockets are *not* the same as the Saldivar temporary reinstatement proceeding, do not include the same issues as the Saldivar case, and were not included in Grimes Rock's appeal to the Ninth Circuit.

Section 106(a)(1) of the Mine Act states, in pertinent part, as follows:

Any person adversely affected or aggrieved by an order of the Commission issued under this Act may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred . . . by filing . . . a written petition praying that the order be modified or set aside. . . . Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of the questions determined therein[.]

30 U.S.C. § 816(a)(1). Although there are issues in the Saldivar temporary reinstatement proceeding³ that relate to these proceedings, the questions that will be determined in these proceedings are not the same and, accordingly, are not subject to the exclusive jurisdiction of the Ninth Circuit.⁴

When the Commission issued its November 28, 2023, decision in the Saldivar temporary reinstatement proceeding, its findings became the law of the Commission with respect to that proceeding. At no time prior to its decision in the Saldivar case did the Commission stay Judge Miller's order of temporary economic reinstatement or stay Judge Miller's order enforcing that

³ The Ninth Circuit's exclusive jurisdiction over the Saldivar temporary reinstatement proceeding began when Grimes Rock filed its December 26, 2023 appeal of the Commission's decision in WEST 2021-0178-DM.

⁴ Here, as mentioned in my Order Granting the Secretary's Motion to Limit Discovery, the issue is whether the Secretary can establish the three alleged violations by a preponderance of the evidence.

order, while the matters were pending before them.⁵ Commission Procedural Rule 45 makes clear that the filing of a petition for review of a temporary reinstatement order “shall not stay the effect of the Judge’s order unless the Commission so directs[.]” 29 C.F.R. § 2700.45(f). I agree with the Secretary that because the orders pending before the Commission were not stayed at the time the Secretary took the enforcement actions at issue in these proceedings, Grimes Rock was obligated to comply with those orders, even if it believed that the orders were incorrect. *See Coleman v. Tollefson*, 575 U.S. 532, 539, (2015); *see also Chapman v. Pac. Tel. & Tel. Co.*, 613 F.2d 193, 197 (9th Cir. 1979).

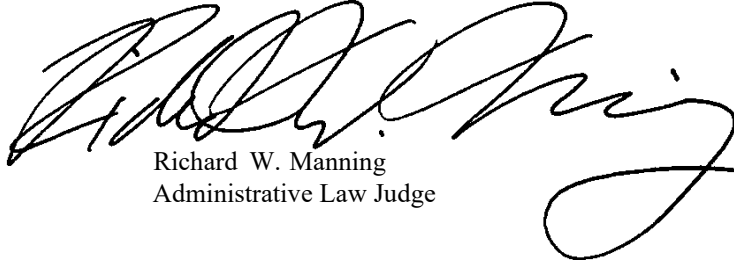
Moreover, Commission case law makes clear that “[a] decision issued by . . . [the] Commission is binding on the parties unless and until stayed or overturned by a reviewing court of appeals.” *Maben Energy Corporation*, 3 FMSHRC 2776, 2777 (Dec. 1981) (citing 30 U.S.C. § 816(c)). The Commission’s decision in the Saldivar case has not been stayed or overturned by the Ninth Circuit. Absent any direction from the Commission or the Ninth Circuit that the Commission’s decision and order in the Saldivar temporary reinstatement proceeding has been stayed or otherwise modified, I must treat it as the law of the Commission.

Grimes Rock cites the decision of a Commission ALJ, *Monongalia County Coal Co.*, 41 FMSHRC 631 (Sept. 2019) (ALJ), and the dissent in a Commission decision, *Mach Mining, LLC*, 33 FMSHRC 1100 (May 2011), for the general proposition that the above captioned cases should be stayed due to their connection to the Saldivar temporary reinstatement proceeding on appeal to the Ninth Circuit. However, Grimes Rock’s reliance is misplaced. Both of the cited cases involved stays requested while other Commission proceedings played out. Here, the Commission has already spoken on some issues in the Saldivar temporary reinstatement proceeding and remanded other issues back to this court.

Although Grimes Rock argues these cases should be stayed for the same reasons articulated by this court during the previous stay while the Saldivar case was pending before the Commission, I disagree. The Commission is the final authority on issues that come before the agency and its rulings are the law of the Commission unless and until overturned or modified by a reviewing court of appeals. Prior to the Commission’s decision in the Saldivar case, there was no law of the Commission on the issues raised in that case that could have affected the issues in the present cases. Now that the Commission has issued its decision, there is Commission law on those issues and I will proceed in these related cases unless otherwise directed.

⁵ On August 30, 2022, a unanimous Commission denied Grimes Rock’s request to stay Judge Miller’s June 17, 2022 order enforcing the parties settlement agreement for temporary economic reinstatement. 44 FMSHRC 725 (Aug. 2022). In denying Grimes Rock’s request for a stay the Commission made clear that the complainant’s “failure to succeed in his discrimination case does not invalidate his previous award for temporary reinstatement[.]” *Id.* at 730.

For the above reasons, the I find that I retrain jurisdiction over these matters and that Grimes Rock's Request for Stay must be **DENIED**.



Richard W. Manning
Administrative Law Judge

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