

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 3, 2015

LOCAL 5929, UNITED MINE
WORKERS OF AMERICA,
Applicant,

v.

BIG RIDGE INC.,
Respondent.

COMPENSATION PROCEEDING

Docket No. LAKE 2012-88-C

Mine: Willow Lake Mine
Mine ID: 11-03054

ORDER GRANTING MOTION FOR SUMMARY DECISION

Before: Judge Moran

This compensation proceeding is before the Court upon an application for compensation under section 111 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 821 (2006) (“Mine Act”). On October 28, 2011, MSHA Inspector Larry Morris issued section 103(k) Order No. 8436067, idling the Willow Lake Mine, following an unplanned roof fall that occurred the previous day. On November 3, 2011, Applicant, Local 5929, United Mine Workers of America (UMWA), filed a claim for one week’s compensation with the Commission, stating that the mine remained idle, and providing the names and signatures of the 142 miners seeking compensation. In its letter, Applicant stated that the order should be modified to a section 107(a) withdrawal order, since “MSHA would not release the mine until they could be sure the miners[’] safety was protected.” Letter of November 3, 2011.

On February 13, 2012, the Commission received Respondent Big Ridge Inc.’s Motion for Summary Decision. Respondent argues that one week’s compensation is not due under section 111 of the Mine Act because MSHA’s inspector issued the order under section 103(k), rather than under section 104 or section 107, and it was the Secretary’s authority to choose what type of order to issue. Moreover, Respondent contends that a section 107(a) order would not be appropriate as no violation of a mandatory health or safety standard had been alleged. Mem. of Law in Supp. of Mot. for Summ. Decision at 4-5.

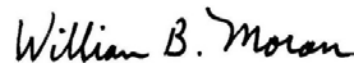
This case was subsequently assigned to the Court on March 28, 2012. As of the date of this Order, Respondent’s Motion remains unopposed. Commission Procedural Rule 67(d), 29 C.F.R. § 2700.67(d), governs oppositions to motions for summary decision, and the consequences for a party’s failure to oppose such a motion:

(d) Form of opposition. An opposition to a motion for summary decision shall include a memorandum of points and authorities specifying why the moving party is not entitled to summary decision and may be supported by affidavits or other verified documents. The opposition shall also include a separate concise statement of each genuine issue of material fact necessary to be litigated, supported by a reference to any accompanying affidavits or other verified documents. Material facts identified as not in issue by the moving party shall be deemed admitted for purposes of the motion unless controverted by the statement in opposition. *If a party does not respond in opposition, summary decision, if appropriate, shall be entered in favor of the moving party.*

29 C.F.R. § 2700.67(d) (emphasis added). Respondent's Motion for Summary Decision was filed almost three and a half years ago, and the time for filing a response has long passed.

As Applicant has failed respond to Respondent's motion, thereby failing to prosecute its case in a timely manner, Respondent's Motion for Summary Decision is **GRANTED**. With no submission on the issue from the UMWA, the Court is without the benefit of a full briefing from both sides on this issue of importance concerning whether compensation is due under section 111 where an idling originates under a section 103(k) order. Because of this significant deficiency, the Court does not address the substantive issue, electing instead to resolve the motion strictly on the basis of the Applicant's procedural failure to respond to the Motion.

Accordingly, without reaching the merits of the case, this compensation proceeding is hereby **DISMISSED WITH PREJUDICE**.


William B. Moran
Administrative Law Judge

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