

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE ADMINISTRATIVE LAW JUDGES
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April 10, 1998

ASSOCIATED ELECTRIC	:	CONTEST PROCEEDINGS
COOPERATIVE, INC.,	:	
Contestant	:	Docket No. CENT 97-164-R
v.	:	Citation No. 4264782; 6/23/97
	:	
SECRETARY OF LABOR,	:	Docket No. CENT 97-165-R
MINE SAFETY AND HEALTH	:	Order No. 4264783; 6/23/97
ADMINISTRATION, (MSHA),	:	
Respondent	:	Thos. Hill Energy Center
	:	Mine ID 23-02155

DECISION

Before: Judge Feldman

These contest proceedings concern Associated Electric Cooperative, Inc.'s (AECI's), refusal to allow the entry of a Mine Safety and Health Administration (MSHA) inspector into AECI's electric power generating facilities at Thomas Hill located in Randolph County, Missouri. At issue is whether AECI's coal handling operations at its Thomas Hill facilities constitute the work of preparing coal as contemplated by section 3(h)(1) of the Federal Mine Safety and Health Act of 1977 (the Mine Act), 30 U.S.C. § 802(h)(1), thus subjecting AECI to Mine Act jurisdiction. Section 3(h)(2)(i) of the Mine Act defines the work of preparing coal as . . . the breaking, crushing, sizing, cleaning, washing, drying, mixing, storage, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing coal as is usually done by the operator of a coal mine.

The nature of the coal preparation process performed by AECI at Thomas Hill is not in dispute and is set forth in the parties' stipulations. Briefly stated, AECI's Thomas Hill power plant receives by rail approximately 83,000 tons of coal weekly from mines located in the State of Wyoming operated by Powder River Coal Company, a subsidiary of Peabody Holding Company. Coal extracted from the Wyoming mines is crushed prior to shipment to a size such that the largest pieces of coal will pass through a 22 inch hole.

Upon arrival from Wyoming, each trainload of coal passes through AECI's Car Dumper Building where coal is dumped into hoppers one carload at a time. At the top of each hopper a grizzly, or grate, removes large clumps of coal or other material that could block the hoppers. From the dump hoppers, coal is transported through the Sample Building, Transfer House No. 3 and, ultimately, Transfer House No. 1, by means of a conveyor system with a series of electromagnets installed to remove any scrap metal and other impurities from the coal. It is important to remove metal debris such as tools, bulldozer bucket teeth, railroad spikes, etc., so

that AECI's equipment used later in the process, e.g., coal crackers, crushers, pulverizers and burner units, is not damaged.

After moving through Transfer House No. 1 the coal is directed by conveyor in one of two directions for final coal preparation tailored for the requirements of three of Thomas Hill's individual generating units. At Units 1 and 2, coal is conveyed to the Crusher House where two Pennsylvania hammer mill crushers crush the coal to a size of 3 inch. At Unit 3 the coal is initially conveyed through coal crackers that break larger clumps of coal into smaller sizes. The coal is then conveyed into a granulator (ring crusher) to ensure sizes no greater than 12 to 2 inches. The sized coal is then stored in silos for the different generating units. The storage silos are located in the power generation building.

In September 1995, the Occupational Safety and Health Administration (OSHA) received a complaint from a Thomas Hill Energy Center employee concerning hazards associated with the inhalation of suspended coal dust as well as hazards related to potential combustion of accumulated coal dust at the track hopper feeder and in conveyor belt tunnels. After visiting Thomas Hill, OSHA informed AECI that it was referring the complaint to MSHA. As a result of OSHA's referral, in March 1977, MSHA, after several consultations with AECI officials, issued a jurisdictional determination citing the boundary between OSHA and MSHA jurisdiction at the point where coal is unloaded using the rotary car dumper onto conveyors that ultimately transport coal into the power generation building. In June 1977, MSHA offered to meet with AECI for the purpose of discussing the Mine Act and regulations. However, AECI informed MSHA that it would refuse to permit an inspection because it objected to MSHA jurisdiction.

On June 23, 1997, MSHA Inspector Larry G. Maloney was refused entry to the Thomas Hill power plant. Maloney issued Citation No. 4264782 alleging a violation of section 103(a) of the Mine Act, 30 U.S.C. ' 813(a), which requires mine operators to permit MSHA representatives to enter mine property. AECI was given 30 minutes to abate the alleged violation. Having failed to do so, Order No. 4264783 was issued pursuant to the provisions of section 104(b) of the Mine Act, 30 U.S.C. ' 814(b), that require timely abatement of cited violations by mine operators.

As a consequence of AECI's continued refusal to submit to an MSHA inspection, on July 3, 1997, pursuant to section 108(a)(1)(D) of the Act, 30 U.S.C. ' 818(a)(1)(D), the Secretary filed a civil action for injunctive relief with The United States District Court for the Eastern District of Missouri.¹ Unaware of the initiation of the civil action, on July 16, 1997, AECI mailed its Notice of Contest with respect to the subject citation and order.

¹ Section 108(a)(1)(D) authorizes the Secretary to seek permanent or temporary injunctive relief in the district court of the United States for the district in which the coal mine is located whenever an operator refuses to permit inspection.

On September 15, 1997, AECI filed a motion to stay these contest proceedings, asserting the pending civil injunctive action and these proceedings create a multiplicity of litigation. AECI's stay request was denied by the undersigned on October 8, 1997. The stay was denied because the issue before the District Court, *i.e.*, whether temporary injunctive relief should be granted, was distinguishable from the ultimate jurisdictional issue before me.

In view of the extensive and detailed stipulations filed by the parties and the absence of outstanding unresolved material issues of fact, I had anticipated disposing of this case by summary decision. However, on February 24, 1998, the Secretary furnished the February 18, 1998, decision of the U.S. District Court for the Eastern District of Missouri permanently enjoining AECI from refusing to permit MSHA inspections at the Thomas Hill Energy Center. *Herman v. Associated Electric Cooperative, Inc.*, No. 2:97CV39-DJS (E.D. Mo. Feb. 18, 1998). The District Court noted section 108(a) of the Mine Act expressly provides primary district court jurisdiction when the Secretary seeks injunctive relief to enjoin habitual violations of health and safety standards. *Slip op.* at 2. The District Court also concluded it had concurrent jurisdiction with this Commission with respect to the underlying jurisdictional issue because disposition of this matter rests upon stipulated facts, and resolution of this case is largely controlled by precedent of both the [Federal Mine Safety and Health Review] Commission and Courts of Appeals. *Id.* at 4.

In view of its primary and concurrent jurisdiction, the court declined to defer to the Commission by issuing a preliminary injunction pending the disposition of this administrative proceeding. Rather, the court exercised its jurisdiction by consolidating its consideration of the preliminary and permanent injunctions, and, permanently enjoined AECI from refusing to permit MSHA inspections at its Thomas Hill facility. *Id.* at 15. AECI has filed a Notice of Appeal of the District Court judgement.

I construed the Secretary's February 24, 1998, submission of the District Court's decision as an assertion that the doctrine of collateral estoppel applies in these matters. Consequently, on March 6, 1998, AECI was ordered to show cause why it should not be precluded from prosecuting its contests of the subject citation and order given the District Court's resolution of the jurisdictional issue.

AECI responded to the order to show cause on March 27, 1998. AECI, citing case law that collateral estoppel is only applicable where the original judgement was rendered by a court of competent jurisdiction, asserts the court did not have jurisdiction to issue a permanent injunction in this case. Consequently, AECI urges this Commission to address, prior to applying the doctrine of collateral estoppel, whether the District Court was a court of competent jurisdiction.

Alternatively, notwithstanding the question of district court jurisdiction, AECI contends the Commission should exercise its discretion and not apply collateral estoppel in this matter because AECI did not have a full and fair opportunity to litigate the ultimate [jurisdictional] fact issue . . . that is now before the Commission because it believed the only pending issue before the District Court was a preliminary injunction.

Finally, AECI requests this matter be stayed pending the outcome of its appeal of the District Court's decision if the Commission declines to issue a decision on the merits.

The Secretary responded to AECI's response to the order to show cause on April 2, 1998. The Secretary asserts collateral estoppel should apply because the District Court had the discretion to permanently enjoin AECI from refusing to allow MSHA inspections rather than delaying its issuance of a permanent injunction until a Commission decision on the merits. With respect to AECI's claim that it did not have a full opportunity to be heard in district court, the Secretary points out that the detailed stipulations filed in this proceeding are identical to the stipulations filed in the injunctive relief matter. Moreover, the parties filed extensive briefs devoted to the merits question in district court.

Discussion

The doctrine of collateral estoppel provides that, once an issue is actually and necessarily determined by a court of competent jurisdiction, the determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. *Montana v. United States*, 440 U.S. 147, 153 (1979). Collateral estoppel serves the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party . . . and of promoting judicial economy by preventing needless litigation. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979) citing *Blonder-Tongue Lab, Inc., v. University of Ill. Found.*, 402 U.S. 313, 328-29 (1971).

As a threshold matter, AECI's assertion that the District Court decision is not dispositive is in stark contrast with its September 15, 1997, motion to stay this administrative proceeding wherein it stated:

Contestant did not intend to cause a multiplicity of litigation and may not have filed the Notice of Contest [initiating this administrative contest proceeding] if it had been aware of the fact that the [Secretary had] already [filed in] District Court.

The [Secretary] has correctly stated to the District Court that resolution of this matter will turn chiefly on the court's determination of issues of law. It is anticipated that the issues of law will be submitted to the court on an agreed or substantially stipulated record of facts. The court will not require this [Commission's] expertise to find the facts and will not be bound by the [Commission's] conclusions of law.

For judicial and administrative economy and to spare expense to the government and this citizen, this administrative proceeding should be stayed. (Contestant's Stay Motion, pp. 1-2).

Undaunted by the above cost-benefit analysis advanced in support of its motion for stay concerning unnecessary multiplicity of litigation, AECI now argues the Commission should not

give recognition to the court's adverse decision. AECI, however, has provided no adequate justification to preclude the applicability of collateral estoppel. While, as AECI contends, a party may collaterally attack the validity of a judgment for lack of subject matter or personal jurisdiction, it is clear that these deficiencies were not present in the court proceeding. In addition, an administrative proceeding is not the proper forum for collaterally attacking a federal court decision. Rather, the jurisdictional issue in this matter is where it belongs -- in the Eighth Circuit.

Moreover, as proceedings under the Mine Act are subject to federal appellate review, it would be inappropriate for this Commission to substitute its judgment for that of a court of appeals as to whether a district court had jurisdiction to render permanent injunctive relief. In addition, section 106 (a)(1) of the Mine Act, 30 U.S.C. ' 816(a)(1), provides that Commission decisions are reviewable in the circuit in which the violation allegedly occurred, or, in the D.C. Circuit. Thus, given the pending appeal in the Eighth Circuit, a Commission decision on the merits in this case could result in appeal of the same issue in different appellate circuits.

Finally, I am not persuaded by AECI's contention that the Commission should exercise its discretion and decide this case on the merits despite the court decision because AECI did not have a full and fair opportunity to be heard. As noted above, AECI has previously opined before this Commission that the court was fully capable of resolving this jurisdictional question. Moreover, the court relied on the same stipulations and arguments that have been presented by the parties in this matter. Contrary to AECI's assertion, the court's decision, which sets forth the pertinent, well settled Commission and federal case law, reflects this jurisdictional question was fully presented and thoroughly considered.

Finally, AECI has presented no basis for staying this matter pending its Eighth Circuit appeal of the permanent injunction as long as the permanent injunction remains in force.

ORDER

Accordingly, the doctrine of collateral estoppel applies in this contest matter. Consequently, **IT IS ORDERED** that Associated Electric Cooperative, Inc.'s contests of 103(a) Citation No. 4264782 in Docket No. CENT 97-164-R, and 104(b) Order No. 4264783 in Docket No. CENT 97-165-R, on the basis of its assertion that it is not subject to Mine Act jurisdiction, **ARE DISMISSED** with prejudice, as long as the attached judgment permanently enjoining AECI from refusing to permit MSHA inspections at its Thomas Hill power plant remains in effect.

Jerold Feldman
Administrative Law Judge

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