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UMWA V. YOUNGSTOWN MINES
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TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
August 15, 1979

LOCAL UNION 5869, DISTRICT 17, UNITED MINE WORKERS OF AMERICA
Docket No. HOPE 76-231
IBMA No. 76-106

v.

YOUNGSTOWN MINES CORPORATION

DECISION

This case involves an application for compensation under section 110(a) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. $801 et seq. (1976) (amended 1977) ["1969 Act"]. Applicants are miners seeking pay for four hours working time lost on December 9, 1975, as a result of a section 104(b) withdrawal order being issued to Youngstown Mines Corporation (Youngstown). 1/

On November 7, 1975, a Mining Enforcement and Safety Administration (MESA) representative issued a notice to Youngstown pursuant to section 104(b) of the 1969 Act, requiring abatement by November 10, 1975, of a violation of 30 CFR $75-1704 for failure to maintain required travelable passageways, to be designated as escapeways. Between November 7 and December 4, 1975, several intermittent work stoppages occurred, in which the applicants participated. During this period, the MESA representative extended the abatement period on several occasions. These extensions indicated that work was in progress to abate the violation, that work stoppages had occurred, and that additional time was needed to obtain compliance. On December 9, 1975, the MESA representative issued a withdrawal order to Youngstown which stated in pertinent part: "Necessary action to abate upon the expiration of extensions of time was not taken."

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1/ Section 104(b) of the 1969 Act provided for issuance of a withdrawal order in the event an operator failed to abate a

violation of a mandatory safety or health standard within the abatement period prescribed by the notice of violation and any extensions of that period.

The withdrawal order was issued on the afternoon shift, all miners on that shift were withdrawn from production work and were detailed to the work of abating the violation for the balance of the shift. 2/ As a result every miner on this shift worked in the abatement process for the balance of the shift and therefore received pay for the entire shift. The evening shift, which included the applicants began work at 3:45 p.m., the regular starting time for that shift. All miners were assigned to the abatement work. On this shift, however, the applicants worked for only four hours and were then sent home. The applicants were paid for the first four hours of the evening shift--the hours they worked on abatement--but not for the remaining four hours of the shift.

Applicants filed this claim under section 110(a) of the 1969 Act claiming entitlement to compensation for the four hours of the evening shift that they did not work. Section 110(a) provided, in pertinent part:

> If a coal mine or area of a coal mine is closed by an order issued under section 104 of this title, all miners working during the shift when such order was issued who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift.... [Emphasis added.]

The parties filed a joint stipulation of facts and waived an evidentiary hearing. On June 18, 1976, Administrative Law Judge Kennedy issued his decision. He granted the application and awarded four hours compensation, with six percent interest from December 9, 1975, the day of idlement, until the compensation is paid. Youngstown appealed the judge's decision and its appeal is before the Commission for disposition. 3/

2/ Section 104(d) of the 1969 Act provided, in pertinent part: "The following persons shall not be required to be withdrawn from, or prohibited from entering, any area of the coal mine subject to an order issued under this section: (1) any person whose presence in such area is necessary, in the judgment of the operator or an authorized representative of the Secretary, to eliminate the condition described in the order ...."

3/ Section 301 of the Federal Mine Safety and Health Amendments Act of 1977, 30 U.S.C. $961 (1978).

Youngstown first contends that section 110(a) obligates an operator to pay compensation only for the first four hours of the next working shift following issuance of a withdrawal order. It argues that a withdraw 1 order has the effect of "officially idling" the miners even if it does not bring about their actual idlement. According to Youngstown, the applicants were "idled" for the first four hours of the evening shift, even though they performed abatement work during that period pursuant to section 104(d). Because they were paid for this four-hour period, Youngstown contends the applicants have been paid all compensation due under section 110(a).

We reject Youngstown's interpretation of section 110(a). Section 110(a) provides that if a section 104 order "is not terminated prior to the next working shift all miners on that shift who are idled by such order shall be entitled to full compensation . . . but for not more than four hours of such shift." In the instant case, after performing four hours of abatement work the miners were sent home. At the time that they were sent home the withdrawal order was still outstanding. But for the withdrawal order, the miners would have worked and received compensation for the final hours of their shift. Therefore, the miners were "idled" by the order within the meaning of section 110(a) for the last four hours of their shift and are entitled to compensation. Section 110(a) does not say that compensation thereunder is limited to the.first four hours of the succeeding shift. Rather, the plain words of section 110(a) require the payment of compensation in these circumstances.

Youngstown's reliance on the decision of the Interior Department's Board of Mine Operations Appeals in Island Creek Coal Co., 5 IBMA 276 (1975), is misplaced. In Island Creek, a section 104(b) withdrawal order was issued at 7:15 a.m. The night shift had ended at 7:00 a.m.; the day shift began at 7:30 a.m. The day shift employees were able to work for the first four hours of their shift before their facility was closed as a result of the withdrawal order. The UMWA filed an application for compensation on behalf of the miners. The administrative law judge rejected the UMWA's claim that the order issued "during" the day shift. The judge found that the order was issued prior to the start of the day shift and, therefore, that the day shift was the "next working shift" within the meaning of section 110(a). He also held, however, that the fact that the day shift employees worked for four hours after the order issued (for which they were paid) did not negate section 110(a)'s requirement that the miners be paid for the four hours that they were "idled."

The UMWA appealed the judge's decision to the Board and argued that the judge erred in finding that the order was not issued "during" the day shift. The Board affirmed the judge's decision, stating:

> [T]he order in question was not issued "during the shift" and . . . the miners on the day shift commencing at 7:30 a.m. are logically on the "next working shift" entitled to full compensation by the operator at their regular rates of pay for the period they were idled, but for not more than 4 hours of such shift. 5 IBMA at 284.

Thus, although the Board did not specifically address the issue, it affirmed the judge's conclusion that the miners were entitled to four hours compensation even though they were compensated for work performed during the initial four hours of the shift. Therefore, in spite of the reliance placed on it by Youngstown, Island Creek actually supports the result reached by the judge in the present case. 4/

The second issue raised by Youngstown is whether unlawful or unauthorized work stoppages by the miners seeking compensation should bar a compensation award if the work stoppages contribute directly to the failure to timely abate a violation, and thus to the issuance of

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4/ Youngstown's further argument that the reporting pay provision of its collective bargaining agreement supports its interpretation of section 110(a) is also rejected. The assertion that Congress patterned section 110(a) compensation rights after the reporting pay provision in the industry collective bargaining agreement is supported only by reference to the Board's statement in Island Creek, supra, that "we are inclined to believe that the provisions of section 110(a) of the Act were designed with knowledge of and perhaps as an extension of the industry practice for payment of reporting pay." 5 IBMA at 283. The Board, however, did not cite any support for its "belie[f]", nor does Youngstown cite any legislative history or other authority. This is too scant a basis to equate statutory rights with private collective bargaining agreement provisions. Furthermore, the Board's phrase "extension of the practice" can be read to mean the granting of additional rights, not merely statutory adoption of existing contractual rights. Finally, as discussed above, the Board's views regarding "industry practice" and the intent of section 110(a) did not preclude it from affirming an award.of compensation for the second four hours of the next working shift in that case.

the withdrawal order upon which the claim for compensation is based. 5/ Youngstown argues that in enacting section 110(a) Congress did not contemplate that compensation would be paid where, as contended here, the order causing the miners to be idled resulted from the conduct of the miners. To do so, Youngstown asserts, is to reward "wrongdoing" on the part of the miners and to work an "injustice" on Youngstown. We affirm the judge's rejection of Youngstown's asserted defense for the following reason. 6/

We believe that important policy considerations dictate that an unlawful or unauthorized work stoppage defense should not be entertained by the Commission in a compensation case. 7/ To hold otherwise would require the Commission to determine in each such case whether a work stoppage violated the collective bargaining agreement or was otherwise unauthorized or unlawful. Such a determination is intimately involved with the specialized law of union-management relations and would thrust the Commission into resolution of issues which should be resolved by the grievance-arbitration process or by other tribunals with direct jurisdiction over such disputes.

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5/ The parties stipulated that "[n]one of the work stoppages ... were authorized by the Respondent or by the Wage Agreement by which the parties hereto are governed in their relationship with one another."

6/ We do not base our decision on the ground that the argument raised by Youngstown is an untimely challenge to the validity of the withdrawal order. Although work stoppages, lawful or otherwise, might provide a basis for extending an abatement period, this does not answer the question here. It may well be that safety conditions fully warrant the issuance of a withdrawal order for failure to abate even though such failure is due solely to an unauthorized or unlawful work stoppage. Thus, the employer may concede the necessity of withdrawal and still be consistent in arguing against compensation to those responsible for the work stoppage and consequent failure to abate.

7/ Furthermore, on the record before us, we find the connection between the work stoppages and the failure to abate too tenuous to support a conclusion that the work stoppages were the cause of the failure to abate. (See Judge's Decision at n. 7.)

Not entertaining a work stoppage defense in compensation cases will not work an injustice to operators, for they are left with other more appropriate remedies for financial harm caused by unlawful work stoppages (e.g.,arbitration or damage actions under section 301 of the Taft-Hartley Act, 29 U.S.C. $185). Other forums are more appropriate than the Commission for resolving issues so closely related to collective bargaining and union-management relations. 8/

The third issue raised by Youngstown on appeal is whether the judge erred in including interest in the award of compensation. The Board of Mine Operations Appeals rejected a claim that interest is awardable under section 110(a) of the 1969 Act in UMWA v. Rushton Mining Co., 3 IBMA 231 (1974), aff'd on other grounds sub nom., Rushton Mining Co. v. Morton, 520 F.2d 716 (3d Cir. 1975). The Board's decision in Rushton, however, is void of any rationale for disallowance, except for the observation that section 110(a) does not expressly provide for such relief. Courts of appeals have considered an analogous issue under the National Labor Relations Act and have overwhelmingly subscribed to the allowance of interest in backpay awards. 9/ In Philip Carey Manufacturing Company v. NLRB, 331 F.2d 720, 729-731 (6th Cir. 1964), cert. denied, 379 U.S. 888, the Sixth Circuit held:

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8/ Our decision is limited to the work stoppage defense asserted here. We do not foreclose the assertion of other affirmative defenses compensation cases.

9/ Reserve Supply Corp. of Long Island v. NLRB, 317 F.2d 785 (2d Cir. 963); International Brotherhood of Operative Potters v. NLRB, 320 F.2d 757 (D.C. Cir. 1963); NLRB v. Globe Products Corp., 322 F.2d 694 (4th Cir. 1963); Marshfield Steel Co. v. NLRB, 324 F. 2d 333 (8th Cir. 1963); Revere Cooper & Brass, Inc. v. NLRB 325 F.2d 132 (7th Cir. 1963); NLRB v. George E. Light Boat Storage, Inc., 373 F.2d 762 (5th Cir. 1967).

> It is well established that the omission of a mention of interest in statutes which create obligations does not show necessarily a Congressional intent to deny interest. [Citing Rodgers v. United States, 332 U.S. 371, 373]. . . .
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> It is recognized under our legal system that wage-earners are heavily dependent upon wages, which more often than not constitute the sole resource to purchase the necessities of life from day to day. . . . Many wage-earners who are deprived of their wages doubtlessly find it necessary to borrow money to sustain themselves and their families, paying rates of interest at six percent or higher.

As under the National Labor Relations Act, we believe that the purposes of the compensation provision under the 1969 Act are best served by allowing interest on compensation awards, even though the Act does not expressly provide for interest. Accordingly, we decline to follow the Board's decision in Rushton Mining Co., supra.

For the foregoing reasons, the decision of the judge awarding