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UMWA V. KANAWHA COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
September 28, 1979

LOCAL UNION NO. 3453, DISTRICT 17, Docket No. HOPE 77-193
UNITED MINE WORKERS OF AMERICA
IBMA No. 78-7

v.

KANAWHA COAL COMPANY

ORDER

On September 14, 1979, Kanawha Coal Company filed a petition for reconsideration of the Commission's decision issued on September 4. Kanawha seeks reconsideration of one issue raised in its appeal and purportedly not resolved properly by the Commission's decision. For the reasons that follow, we deny the petition.

Kanawha submits that the Commission's decision does not properly resolve whether the administrative law judge erred in finding that certain miners were idled by a withdrawal order issued to Kanawha and entitled to four hours compensation under section 110(a) 1/ of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §801 et seq. (1976) (amended 1977). Kanawha argues that the Commission erred in affirming the judge's decision because the involved miners were not idled by the withdrawal order, but by their refusal to accept Kanawha's offer of four hours alternative work during the first half of their shift.

The interpretation of section 110(a) by the Commission in Youngstown Mines Corp., No. HOPE 76-231 (August 15, 1979), requires the award of compensation in the circumstances here. In Youngstown, the Commission awarded four hours compensation to miners who accepted and performed four hours of alternative work during the first half of their shift and

1/ Section 110(a) of the Act, in pertinent part, provided:

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 the 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.]

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were then sent home. The Commission found that "[b]ut for the withdrawal order, the miners would have worked and received compensation for the final [four] hours of their shift". Here, even if the miners had accepted alternative work for the first four hours of their shift, alternative work was not available for the final four hours. Therefore, the miners were idled by the withdrawal order during the second half of their shift and are due compensation for this period under section 110(a). *Youngstown Mines Corp.* This case does not present the issue of whether miners who refuse an offer of eight hours of alternative work are entitled to compensation under section 110(a). Therefore, we need not embrace the judge's reasoning to the extent that his decision can be read to award compensation because miners were unable to perform their "regular duties" or "specific jobs".

Accordingly, the petition for reconsideration is denied.