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PITTSBURG & MIDWAY COAL MINING V. MSHA
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
April 21, 1980

PITTSBURG & MIDWAY COAL MINING COMPANY
v. DOCKET NO. BARB 74-666

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)
IBMA 76-57

DECISION

This case arises under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.c. 801 et seq. (1976)(amended 1977)["the 1969 Act"]. It involves an imminent danger withdrawal order that was issued on February 28, 1974, by a Mining Enforcement and Safety Administration (MESA) inspector to Pittsburg & Midway Coal Mining Company under section 104(a) of the 1969 Act. 1/ In the withdrawal order the inspector cited four conditions that he believed constituted an imminent danger. 2/ The cited conditions involved an allegedly damaged trailing cable to a roof bolting machine, an allegedly damaged trailing cable to a loading machine, alleged accumulations of loose coal and coal dust, and allegedly loose overhanging ribs. The order was terminated on March 10, 1974, after the cited conditions were abated.

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1/ Section 104(a) Provided:

If, upon any inspection of a coal mine, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except those referred to in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering. such

area until an authorized representative of the Secretary determines that such imminent danger no longer exists.

2/ Section 3(j) of the 1969 Act defined the term "imminent danger" as:

> the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated;

Pittsburg & Midway filed an application for review of the withdrawal order and a hearing was held. On December 16, 1975, the administrative law judge held for MESA in part and for Pittsburg & Midway in part. The judge found that the conditions created by the trailing cable to the roof bolting machine and the trailing cable to the loading machine constituted imminent dangers, but that the conditions created by the accumulations of loose coal and coal dust, and the overhanging ribs did not. The judge also modified the withdrawal order by deleting its references to the overhanging ribs and to the accumulations of loose coal and coal dust (but not the references to accumulations relating to the trailing cables to the roof bolting and the loading machines). Both parties appealed the portions of the judge's decision that were adverse to them, including the judge's modification of the withdrawal order.

After a careful review of the record, we affirm the judge's decision. We conclude that the judge's basic factual findings are correct, that the results reached by the judge are correct, and that any error he might have committed in applying a test for determining whether an imminent danger existed was not prejudicial. In this regard, we note that whether the question of imminent danger is decided with the "as probable as not" gloss upon the language of section 3(j), or with the language of section 3(j) alone, the outcome here would be the same. We therefore need not, and do not, adopt or in any way approve the "as probable as not" standard that the judge applied. With respect to cases that arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., we will examine anew the question of what conditions or practices constitute an imminent danger. Finally, we conclude that the judge acted correctly in modifying the withdrawal order. Section 105(b) of the 1969 Act specifically permitted the modification of an imminent danger withdrawal order after a hearing. 3/

Accordingly, the judge's decision is affirmed.

3/ Section 105(b) stated:

> Upon receiving the report of such investigation, the Secretary shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the order, or the modification or termination of such order, or the notice, complained of and incorporate his findings therein.

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Distribution

Barry G. McGrath, Esq.
George M. Paulson, Jr., Esq.
Pittsburgh & Midway Coal Company
The Gulf Companies
1720 South Bellaire St.
Denver, Colorado 80222

Thomas A. Mascolino, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, VA 22203

L. Thomas Galloway, Esq.
Center for Law & Social Policy
1751 N Street, N.W.
Washington, D.C. 20036

Mary Lu Jordan, Esq.
United Mine Workers of America
900 Fifteenth St., N.W.
Washington, D.C. 20005

Administrative Law Judge John F. Cook
FMSHRC
Skyline Center 2, lOth Floor
5203 Leesburg Pike
Falls Church, VA 22041