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SOL V. ISLAND CREEK COAL AND LANGLEY & MORGAN
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
July 25, 1980

SECRETARY OF LABOR
on behalf of LARRY D. LONG

v. Docket No. VA 79-81-D

ISLAND CREEK COAL COMPANY

and

LANGLEY & MORGAN CORPORATION

ORDER

Island Creek Coal Company and Langley & Morgan Corporation have filed petitions for discretionary review of what they believe may be the decision of the administrative law judge. We find that the judge's final disposition of the proceedings has not yet been issued and that the petitions were therefore prematurely filed.

This is a discrimination case brought by the Secretary of Labor on behalf of Larry D. Long against Island Creek and Langley & Morgan Corporation ("the operators"). The Secretary alleged that the operators violated section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (Supp. II 1978) ["the Act"], and in his complaint requested the following relief: a finding that Mr. Long was "unlawfully discriminated against ... for engaging in actions protected under section 105(c)(1)"; an order that the employment record of Mr. Long be completely expunged of all references to an unlawfully issued discharge; an order directing the operators to "cease and desist in ... discriminatory harassment" of Mr. Long; an order directing the of Mr. Long's costs and expenses reasonably incurred for and in payment connection with the institution and prosecution of these proceedings; and the assessment of civil

penalties against each operator.

On June 19, 1980, the Executive Director of the Commission issued a document entitled "Decision" that had been transmitted to him from the administrative law judge. The decision was lengthy, and contained findings of facts and conclusions of law generally unfavorable to the operators. The judge's last conclusion of law declared that the operators had violated section 105(c) of the Act by certain reassignments. Immediately after this conclusion of law, appeared the following:

ORDER

PENDING FINAL ORDER, Applicant shall have 7 days to submit a proposed order for relief, with service on Respondents. Respondents shall have 7 days from such service to file any response to the proposed order.

On July 14, 1980, Island Creek filed a petition for discretionary review. Island Creek believes, based on the wording of the judge's order and discussions with the judge's office, that the document entitled "Decision" was not intended to constitute the judge's final disposition of the proceeding. It therefore argues the issuance of the decision should not be viewed as having begun the running of the time period for filing a petition for discretionary review. Island Creek notes, however, that this document was transmitted to and issued by the Executive Director, and states that "[s]uch action would thereby terminate the jurisdiction of the Judge under the provisions of [Commission Rule 65(c), 29 CFR] 2700.65(c)." Because Island Creek is uncertain of the consequences of these events, it filed this petition to protect its right to seek discretionary review by the Commission. The issue raised by Island Creek is therefore whether the document issued on June 19, 1980, constituted the judge's final disposition of the proceedings. Langley & Morgan's petition for discretionary review, which was filed on July 18, alleges that the judge's decision is erroneous.

Commission Rule 65 states in part as follows:

2700.65 Decision of the Judge.

(a) Form and content of the Judge's decision. The Judge shall make a decision that constitutes his final disposition of the proceedings. The decision shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. If a decision is announced orally from the bench, it shall be reduced to writing after filing of the transcript. An order by a Judge approving a settlement proposal is a decision of a Judge.

(b) Procedure for issuance. The Judge shall transmit to the Executive Director his decision, the record (including the transcript), and as many copies of his decision as there are parties plus seven. The Executive Director shall then promptly issue to each party and each

Commissioner a copy of the decision.

(c) Termination of the Judge's jurisdiction;
correction of clerical errors. The jurisdiction of the
Judge terminates when his decision has been issued by the
Executive Director....

Once a judge's decision that constitutes his final disposition of
the proceedings is issued by the Executive Director, the periods for
drafting and filing a petition for discretionary review, for the
Commission to

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consider and order review of the judge's decision on its own motion, and for the Commission to consider and grant a petition for discretionary review begin to run. Section 113(d)(1) and (2). In view of these consequences, the careful following of our rules, which were designed to ensure the smooth functioning the Commission's review process, is essential.

Commission Rule 65(a), when read as a whole, requires that the decision of the judge contain an order that finally disposes of the proceedings. Inasmuch as the order that appears at the end of the judge's purported decision does not dispose of the proceeding to any extent, the issuance of this decision did not start the running of the review periods in section 113 of the Act. The petitions for discretionary review are therefore premature.

Accordingly, the petitions for discretionary review are, in these circumstances, dismissed as premature. The Executive Director shall return the record to the judge.

Richard V. Backley, Commissioner

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