

CCASE:  
MSHA V. PITTSBURGH & MIDWAY COAL

DDATE:  
19800804

TTEXT:  
FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
WASHINGTON, D.C. 20006

August 4, 1980  
SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),

Docket Nos. BARB 79-307-P

BARB 79-285-P

PIKE 79-129-P

KENT 79-74

79-180

79-367

79-269

79-99

79-229

v.  
PITTSBURGH & MIDWAY COAL MINING  
COMPANY

#### DECISION

In his decision below, the administrative law judge held that Pittsburgh & Midway Coal Mining Company ("P&M") was responsible for certain violations of mandatory safety standards committed by certain independent contractors. He based his conclusion of liability on the Commission's decision in Old Ben Coal Company, 1 FMSHRC 1480 (1979), and assessed a penalty against P&M. We granted P&M's petition for discretionary review in part. For the reasons set forth below, we do not at this time reach the issues directed for review but rather remand the case for a limited purpose.

At the time the citations were issued to P&M, the Secretary of Labor was following his interim enforcement policy of citing only owner-operators for violations committed by their independent contractors. See Old Ben Coal Co., supra. While this case was pending before the Commission on review, however, the Secretary published in the Federal Register new enforcement guidelines as to when he will cite independent contractors, when he will cite owner operators, or when he will cite both, either jointly or severally for violations committed by independent contractors. 45 Fed. Reg. 44,494-98 (1980). At oral argument before the Commission, counsel for the Secretary suggested that "fair enforcement of the Mine Act will be promoted by remanding this case to the administrative law judge, so independent contractors who wish to participate in the case may have an opportunity to do so, and so the Secretary will have an opportunity to apply h!s new policy on citation of independent contractors to the

circumstances of this case." (Transcript of Oral Argument of June 24, 1980, p. 43, emphasis added.).

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Therefore, in the interests of fair enforcement of the Act, this case is remanded to the administrative law judge for the purpose of affording the Secretary an opportunity to determine whether to continue to prosecute these citations against P&M, or any independent contractors which are claimed to have violated the standards cited, or both. If the Secretary determines in his judgment to continue to proceed against P&M only, he shall so inform the judge within 30 days of this decision, and the judge shall transmit the record to the Commission for continued consideration of the issues on review. If the Secretary determines not to proceed further against P&M, he shall make an appropriate motion to the judge, who, in ruling on such motion shall issue a new order or decision finally disposing of the proceeding against P&M which constitutes his final disposition of the proceedings against P&M, within the meaning of section 113(d)(1) of the Act. If the Secretary determines to continue to proceed both against P&M and any independent contractors involved which are claimed to have violated the standards cited in these dockets, disposition of all citations shall be had prior to any further review by the Commission.

Marian Pearlman Nease, Commissioner

Jestrab, Commissioner, dissenting:

I would reverse the decision of the administrative law judge and direct dismissal of these proceedings. The Secretary concedes, in effect, and correctly I think Pitt & Midway is not the operator. In my opinion this concession resolves the only question before us.

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