

CCASE:
MSHA V. K COAL
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C. 20006
August 4, 1980

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

v. Docket No. PENN 79-60

C AND K COAL COMPANY

DECISION

In his decision below, the administrative law judge held that C and K Coal Company was responsible for certain violations of mandatory safety standards committed by an independent contractor. 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 C and K. We granted C and K's petition for discretionary review. For the reasons set forth in our recent decision in Pittsburg & Midway Coal Mining Company, Docket Nos. BARB 79-307-P, etc. (August 4, 1980), we do not at this time reach the issues directed for review but rather remand the case for a limited purpose.

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 C and K, or any independent contractor which is claimed to have violated the standards cited, or both. If the Secretary determines in his judgment to continue to proceed against C and K 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 C and K, 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

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against C and K, within the meaning of section 113(d)(1) of the Act. If the Secretary determines to continue to proceed both against C and K and any independent contractor involved which is 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.

Commissioner

Frank F. Jestrab,

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