

CCASE:

MSHA V. PHILLIPS URANIUM

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),

v.

Docket Nos. CENT 79-281-M

CENT 79-282-M

PHILLIPS URANIUM CORPORATION

CENT 80-6-M

CENT 80-124-M

DECISION

In his decision below, the administrative law judge held that Phillips Uranium Corporation was responsible for certain violations of mandatory safety standards committed by independent contractors. He based his conclusion of liability on the Commission's decision in Old Ben Coal Company. 1 FMSHRC 14SO (1979), and assessed a penalty against Phillips Uranium. We granted Phillips Uranium'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 Phillips Uranium, 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 Phillips Uranium 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 Phillips Uranium, 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 Phillips Uranium which constitutes his final disposition of the proceedings against Phillips Uranium,

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within the meaning of section 113(d)(1) of the Act. If the Secretary determines to continue to proceed both against Phillips Uranium 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.

~2052 Frank F. Jestrab,

Commissioner

Distribution

George W. Terry, Jr., Esq.

Malcolm L. Shannon, Jr., Esq.

Phillips Uranium Corporation

Legal Division

P.O. Box 26236

Albuquerque, N.M. 87125

Office of the Solicitor

U.S. Department of Labor

4015 Wilson Blvd.

Arlington, Va. 22203

Administrative Law Judge John Carlson

FMSHRC

333 W. Colfax Ave., Suite 320

Denver, Colorado 80204