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UMWA V. WILLIAMSON SHAFT CONTRACTING
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
January 28, 1981

LOCAL UNION NO. 6843, DISTRICT 28,
UNITED MINE WORKERS OF AMERICA

v. Docket No. VA 80-17-C

WILLIAMSON SHAFT CONTRACTING
COMPANY

DECISION

This proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (Supp. III 1979). The United Mine Workers of America applied for compensation for 13 miners pursuant to section 111 of the Act. 1/ The company moved to dismiss the application for failure to state a claim upon which relief could be granted. The administrative law judge granted the motion. We affirm the judge.

In its application the union alleged the following: that an MSHA inspector visited the mine to conduct a roof-control inspection; that during the inspection he found that a majority of the roof bolts used to support the roof in a particular area lacked a proper amount of torque: that the inspector advised the company the only work which could be done in the area was to support the roof: and that as a result of this statement normal mining operations halted and 13 miners were idled. The union asserted that the inspector's instruction amounted to an oral imminent danger order of withdrawal under section 107(a) of the Act. 2/

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1/ Section 111 of the Act provides:

> If a ... mine is closed by an order issued under section 103, section 104, or section 107, all miners working during the shift when such order was issued who are idled by

such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift....

2/ Section 107(a) states:

If, upon any inspection or investigation of a coal or other mine which is subject to this Act, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area or such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 104(c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger and the conditions or practices which caused such imminent danger no longer exist....

The judge noted that section 107 specifically requires imminent danger orders to be written. 3/ The judge found that under the circumstances alleged in the application, the only type of withdrawal order the inspector could have issued was one for imminent danger and that he clearly did not issue one. Without an order upon which to base the compensation claim, the judge concluded the union's application was fatally defective.

The union would have us find the judge erred. It argues the requirement of the Act that an imminent danger order be in writing can not be relied upon to defeat a compensation claim. We disagree.

The mandate of section 107(d) that an imminent danger order be written is explicit. It reflects congressional concern that an operator be adequately advised of the imminent danger so that corrective action may be taken. 4/ In so doing it offers protection to an operator's property and to a miner's life and limb. Moreover, it offers all parties procedural protection in any subsequent litigation by placing them on notice as to the conditions which constitute the alleged imminent danger and the conditions under which the order arose. Presumably this eliminates much of the speculation and dispute an oral order would almost surely engender. This is not to say that a claim for compensation may never be based upon an oral finding of imminent danger. There may well be extraordinary circumstances wherein an inspector who makes such a finding fails in or is prevented by subsequent events from confirming it in a written order of withdrawal. However, no such special circumstances were pleaded by the union. The mere assertion that an inspector's statements are tantamount to an oral order without assertions that he intended to issue an imminent danger order and as to why the inspector was prevented from reducing it to writing will not support a claim. Accordingly, the judge's order is affirmed.

Richard V. Backley, Chairman

Frank F. Jestrab, Commissioner

A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner

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3/ Section 107(c) and (d) state:

(c) Orders issued pursuant to subsection (a) shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger and a description of the area of the coal or other mine from which persons must be withdrawn and prohibited from entering.

(d) Each finding and order issued under this section ... shall be in writing, and shall be signed by the person making them.

4/ S. Rep. No. 95-181, 95th Cong.. 1st Sess. 41 (1977) reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess.. Legislative History of the Federal Mine Safety and Health Act of 1977 at 626 (1978).

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