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UMWA V. EASTERN ASSOC. COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 11, 1981
LOCAL UNION NO. 781,
DISTRICT 17,
UNITED MINE WORKERS OF AMERICA

v. Docket No. WEVA 80-473-C

EASTERN ASSOCIATED COAL CORP.
DECISION
The issue in this case is whether miners are entitled to compensation under section 111 of the Federal Mine Safety and Health Act of 1977 ("the 1977 Mine Act"), 30 U.S.C. $821 (Supp. III 1979), where a withdrawal order under section 103(k), 30 U.S.C. $813(k), was issued after the miners had already withdrawn from the mine pursuant to their collective bargaining agreement's non-compensated "memorial period." For the reasons stated below, we affirm the judge's finding that on the facts present here there is no entitlement to compensation.
The facts are undisputed. At approximately 1:30 a.m. on March 19, 1980, a miner was fatally injured in the Wharton No. 4 Mine of Eastern Associated Coal Corporation. The Wharton No. 4 miners are represented by the United Mine Workers of America. After the accident, the miners on the midnight shift (12:00-8:00 a.m.) withdrew pursuant to the Union's collective bargaining agreement with Eastern Associated. The agreement provided that following a fatality, miners would be withdrawn and the mine closed for a 24-hour memorial period during which the miners were not contractually entitled to compensation. 1/ At 6:19 a.m. on March 19, after the miners had withdrawn, an MSHA inspector issued a section 103(k) withdrawal order. Section 103(k) provides in pertinent part:
In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, ... may issue such orders as he deems appropriate to insure the safety of any person in the ... mine....

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1/ Article XXII, section (k) of the parties' agreement, the National Bituminous Coal Wage Agreement of 1978, stated:
"[W]ork shall cease at any mine on any shifts during which a

fatal accident occurs, and the mine shall remain closed on all succeeding shifts until the starting time of the next regularly scheduled work of the shift on which the fatality occurred."

The Union concedes that miners are not contractually entitled to pay during such memorial periods. Br. 2.

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The order closed down the entire mine. It was terminated at 3:13 p.m. the following day, March 20. There is no evidence that the miners offered to, or did, return to work at any time during the memorial period.

The Union subsequently filed a complaint for compensation under section 111 of the 1977 Mine Act. Section 111 provides in pertinent part:

If a coal or other 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 ... 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....

The Union sought 1.68 hours of compensation for the March 19 midnight shift and 4 hours of compensation for the immediately following March 19 day shift (8:00-4:00) -- that is, for the time the 103(k) order was in effect on the midnight shift (6:19 to 8:00 a.m.) and for four hours of the following day shift. The administrative law judge granted Eastern Associated's motion for summary decision and dismissed the proceeding. 2 FMSHRC 3422. The judge held that section 111 compensation is awardable only for pay lost when miners are idled as a result of one of the designated orders. He found that these miners were idled because they honored their memorial period, during which they were not entitled to pay, and that, therefore, the section 103(k) order issued after their memorial withdrawal did not idle them and statutorily entitle them to compensation. Id. at 3423-3424. We affirm.

Addressing first the purpose of section 111, we are persuaded, as was the judge, by the statute's plain language and its legislative history that Congress intended section 111 to provide limited compensation solely for regular pay lost because of issuance of one of the designated orders. In relevant part, section 111 states that miners are entitled to compensation only if they are "idled by" a section 103(k) withdrawal order. This language clearly indicates that

there must be a nexus between the miners' idlement and the issuance of the section 103(k) order. Section 111 also makes clear that the statutory compensation applies only against such regular rates of pay as the miners would have earned "during the period" of idlement had the order not been issued or had the reasons leading to their idlement and to the order not occurred.

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In addition, the compensation limits in section 111 also convince us that the section does not authorize an independent award of pay or damages, but rather only a partial recompense for lost earnings. The relevant compensation clauses of section 111 state that miners are entitled "to full compensation by the operator ... for the period they are idled, but not for more than the balance of each shift" and that if the withdrawal order is not terminated prior to the next working shift, all idled miners on that shift "shall be entitled to full compensation ... but for not more than four hours of such shift." Had Congress intended section 111 to create a source of independent pay or damages, it would not have so limited the compensation to only a portion of pay. 2/

This result is buttressed by the report of the Senate Committee which largely drafted the 1977 Mine Act:

[T]he primary objective of this Act is to assure the maximum safety and health of miners. For this reason, the bill provides ... that miners who are withdrawn from a mine because of the issuance of a withdrawal order shall receive certain compensation during periods of their withdrawal. This provision, drawn from the Coal Act, is not intended to be punitive, but recognizes that miners should not lose pay because of the operator's violations, or because of an imminent danger which was totally outside their control. It is therefore a remedial provision which also furnishes added incentive for the operator to comply with the law. [S. Rep. No. 95-181, 95th Cong., 1st Sess. 46-47 (1977), reprinted in Legislative History of Federal Mine Safety and Health Act of 1977, at 634-635 (1978). (Emphasis added.)]

The Senate report not only focuses on the considerations discussed above, but also points out the strong incentive which the section furnishes operators to comply with the 1977 Mine Act's safety requirements. Regarding the section's safety purposes, we also find the Third Circuit's observations in Rushton Mining, below, concerning former section 110(a) of the 1969 Coal Act (n. 2 below) fully applicable to section 111:

By giving [miners] ... compensation--albeit very limited--for work lost as a result of withdrawal orders, [the section] encourages miners to report dangerous conditions [and

for] the same reason, ... removes a potential impediment to the inspector's actually issuing withdrawal orders.

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2/ The Interior Board of Mine Operations Appeals also interpreted section 111's predecessor provision in the Federal Coal Mine Health and Safety Act of 1969, ("the 1969 Coal Act"), 30 U.S.C. $801 et seq. (1976)(amended 1977), former section 110(a), to authorize only limited compensation for earnings lost because of a withdrawal order. Cf. UMWA, Loc. Union No. 1993 v. Consolidation Coal Co., 8 IBMA 1, 7-10 (1977). To similar effect are the Third Circuit's observations in Rushton Mining Co. v. Morton, 520 F.2d 716, 720-722 (1975).

In sum, section 111 compensation is awardable only if there is a nexus between a designated withdrawal order and the miners' idlement and loss of pay, or between the underlying reasons for the idlement and pay loss and the reasons for the order. Mere occurrence alone of withdrawal or idlement and issuance of an order does not, by itself, justify compensation. This case does not require us to attempt an exhaustive definition of all conceivable relationships between withdrawal orders and idlement sufficiently substantial to support a section 111 award. Where an order precedes and plainly causes a withdrawal leading to loss of pay, compensation ordinarily will be awarded; conversely, if a section 103(k) order were issued while miners were out of the mine on a preceding economic strike, or where the order has nothing to do with the withdrawal or there was no pre-existing private claim to pay, compensation will not be awarded. However, withdrawal situations can arise involving more complicated sequences of events or concurrent operation of causative factors. In resolving the latter class of cases, we think it wiser to develop the nexus rule on a case-by-case basis. In such cases, we will examine the relationship between the underlying reasons for the withdrawal and for the order, and will give balanced consideration both to the limited and purely compensatory character of section 111 and to the overall safety purposes of the 1977 Mine Act and section 111 itself. Section 111 is designed to promote safety and protect lives, and where a work stoppage due to safety concerns precedes an order and is occasioned by the same exigent or emergency conditions leading to the order, compensation may be justified to effectuate those safety purposes. Cf. Peabody Coal Co. v. MSHA, 1 FMSHRC 1785, 1786-1788, 1790 (1979), and UMWA, Dist. 31 v. Clinchfield Coal Co., 1 IBMA 33-35, 40-41 (1971) both cases permitting compensation under former section 110(a) of the 1969 Coal Act where a work stoppage in the face of emergency conditions preceded the withdrawal orders). We now apply these general principles to the specific question on review. 3/

The undisputed facts show that the miners left the mine several

hours prior to the issuance of the section 103(k) withdrawal order. We agree with the judge that the cause of the miners' departure was the 24-hour memorial provision of the 1978 collective bargaining agreement, not

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3/ In analyzing former section 110(a) of the 1969 Coal Act, we have previously adopted a similar nexus rule and held that miners were idled within the meaning of section 110(a) if "but for the withdrawal order," they would have worked and been paid. See, for example, Local Union 5869, Dist. 17, UMWA v. Youngstown Mines Corp., 1 FMSHRC 990, 992 (1979). While the "but for" language is a helpful guide to resolving relation ship problems in both section 110(a) and 111 cases, it was not meant to, nor can it, be a definitive verbal formula. As we have indicated, we must also handle such cases by balancing the policy considerations discussed above.

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the section 103(k) order. Thus, even if the section 103(k) withdrawal order had not been issued, the miners on the midnight shift (12:00 a.m.-8:00 a.m.) and the day shift (8:00 a.m.-4:00 p.m.) would not have worked or reported. There is no evidence that there were any emergency conditions present that would have independently triggered a work stoppage. Furthermore, because the miners observed the non-compensated memorial period, we cannot say that they would have been paid by Eastern Associated had the withdrawal order not been issued. Under these circumstances, the section 103(k) withdrawal order was merely an event that occurred while the memorial period was being observed. Since the order did not cause the miners' withdrawal and since they placed themselves in a position where they would not have been paid in the order's absence, we do not find a relationship between the order and idlement sufficiently substantial to justify an award of section 111 compensation. We again emphasize that there is no evidence that the withdrawal was independently justified by exigent circumstances or amounted to a protected work refusal.

We cannot agree with the Union's contention that denial of section 111 compensation would "supplant [the 1977 Mine Act] with a contract provision." Br. 3. It is true that we do not decide cases in a manner which.permits parties' private agreements to overcome mandatory safety requirements or miners' protected rights; nor do we unnecessarily thrust ourselves into resolution of labor or collective bargaining disputes. See Youngstown Mines, supra, 1 FMSHRC at 993-995. However, section 111 requires us to determine whether there is a pre-existing private entitlement to pay. To make that determination, we are occasionally obliged to examine the parties' collective bargaining agreement which fixes pay rights. In addition, as here, we must sometimes look to the agreement to understand the

reasons for a private withdrawal. In the present case, there is no need for contract interpretation because the parties are agreed that the miners withdrew pursuant to the memorial provision and have stipulated that under that provision the miners were not entitled to pay from Eastern Associated during the memorial period. Similarly, the Union's reliance (Br. 2-3 & nn. 2 & 3) on certain recitations in the contract that neither party waives its 1977 Mine Act "rights" would incorrectly transform section 111 into a statutory indemnity against absence, loss, or surrender of private pay entitlements. While the Union gave up a private claim to pay, it has not waived any statutory entitlement.

For the foregoing reasons, we affirm the decision of the judge.

Richard V. Backley, Chairman
Frank F. Jestrab, Commissioner
A. E. Lawson, Commissioner
Marian Pearlman Nease, Commissioner

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