

CCASE:
GERALD D. BOONE V. REBEL COAL
DDATE:
19810806
TTEXT:
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
August 6, 1981
GERALD D. BOONE

v.

Docket No. WEVA 80-532-D

REBEL COAL COMPANY

ORDER

This proceeding was initiated by a complaint filed by Gerald D. Boone under the provisions of section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq., the "Act" alleging that Mr. Boone was discharged by the Rebel Coal Company in violation of section 105(c)(1) of the Act because he refused to comply with an order to drive a haulage truck he claimed was in a hazardous condition. On July 8, 1981, the judge issued his decision finding that Boone was discharged in violation of section 105(c)(1) of the Act. The judge neither granted nor denied any relief but ordered the parties "to consult and seek to stipulate as to the specific damages resulting from the discharge of Gerald D. Boone found unlawful in these proceedings and to report to me in writing on or before July 30, 1981, the results of such consultations."

On July 30, 1981, Rebel Coal Company filed its Petition for Review raising questions of law and fact relating to the judge's decision. The Commission considered an analogous situation in Council of Southern Mountains, Inc. v. Martin County Coal Corp., 2 FMSHRC 3216 (Nov. 12, 1980). There the judge had issued his decision and granted some relief, but did not resolve the amount of attorney fees and other costs. We looked to section 113(d)(1) of the Act and Commission Rule 65(a) to conclude that failure to resolve these monetary awards did not constitute a final disposition by the judge to initiate the running of the statutory review periods under section 113 of the Act. In that case we dismissed the petitions for review as premature. In the instant case, the judge did not resolve any monetary awards, but ordered the parties to consult and to report back to him. Our reasoning and decision in Martin County Coal Corp., supra, is applicable to this case.

Accordingly, the petition for review filed by Rebel Coal Company is dismissed as premature. The parties may file petitions for review

in accordance with section 113 of the Act and Commission Rule 70
(29 C.F.R. 2700.70) once the judge has made his final disposition of
this proceeding.

Marian Pearlman Nease, Commissioner

~1902

Distribution:

Daniel F. Hedges,

Appalachian Research and Defense Fund, Inc.

1116 - B Kanawha Boulevard

East Charleston, West Virginia 25301

Carl McAfee, Esq.

Clyde McAfee and Adkins

1022 Park Avenue, NW

Norton, Virginia 24273

Cynthia Attwood, Esq.

U.S.Department of Labor

Office of the Solicitor

4015 Wilson Boulevard

Arlington, Virginia 22203

Administrative Law Judge Gary Melick

Office of Administrative law Judges

Federal Mine Safety and Health Review Commission

2 Skyline, 10th Floor

5203 Leesburg Pike

Falls Church, Virginia 22041