

CCASE:
MSHA V. METTIKI COAL
DDATE:
19811016
TTEXT:
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
October 16, 1981
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

Docket No. YORK 80-140

v.

METTIKI COAL CORPORATION

DECISION

This case is before the Commission on grant of the Secretary of Labor's petition for interlocutory review. Oral argument was held on September 23, 1981. The relevant procedural history is set forth below.

This controversy arose when the Secretary filed a petition for assessment of civil penalties totalling \$10,000 for seven alleged violations of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 et seq. Mettiki Coal Corporation contested the proposed penalties and the case was assigned to an administrative law judge of the Commission. The parties subsequently agreed to a settlement of the case that included a reduction of the total penalty to \$7,900. The judge denied the motion for approval of settlement. Thereafter, the Secretary filed a motion to withdraw the petition for penalty assessment and to dismiss the case. The basis for the Secretary's motion was that Mettiki had advised the Secretary that it desired to withdraw its notice of contest and had tendered full payment of the \$10,000 penalty originally proposed. The judge construed the Secretary's motion as one for approval of a settlement and denied the motion.

We hold that the judge erred in treating the Secretary's motion as a motion for approval of settlement. The Secretary sought withdrawal of his petition for penalty assessment and dismissal of the case. The fact that the motion was based upon acceptance by the operator of the amount proposed by the Secretary in full does not alter the pleading nor the Rule applicable thereto (29 CFR 2700.11). The posture and circumstances of this case dictate a finding that the judge abused his discretion in denying the motion to dismiss filed by the Secretary. We arrive at this conclusion on the basis of the record which indicates that full payment of the \$10,000 penalty sought by the

Secretary is a satisfactory and appropriate resolution of this controversy. This is not to say, however, that the Commission or its judges may not deny a party's motion to withdraw a pleading where the record discloses that resolution of the matter pending would best be served by the Commission's settlement procedures or by an evidentiary hearing. This situation is not presented in this case.

~2278

Accordingly, the Secretary's motion is granted and the case is dismissed.

~2279

Distribution

Ronald E. Meisburg, Esq.
Smith, Heenan, Althen & Zanolli
1110 Vermont Ave., N.W.
Washington, D.C. 20005
Ralph M. Burnett, Esq.
Burnett, Eiswert & Crawford, P.A.
5000 Thayer Center
Oakland, Maryland 21550
Covette Rooney, Esq.
Office of the Solicitor
U.S. Department of Labor
14480 Gateway Bldg.
3535 Market St.
Philadelphia, PA 19104
Leslie Canfield, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, Virginia 22203
Administrative Law Judge John Cook
FMSHRC
5203 Leesburg Pike, 10th Floor
Falls Church, Virginia 22041