

CCASE:
VICTOR McCOY V. CRESCENT COAL
DDATE:
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TTEXT:
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
November 5, 1981
VICTOR McCOY,
Complainant

v. Docket No. PIKE 77-71

CRESCENT COAL COMPANY,
Respondent

ORDER

On May 10, 1977, Victor McCoy filed a complaint of discrimination against Crescent Coal Company under section 110(b) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 801 et seq., (1976 and Supp. I 1977) alleging he was discharged by Crescent on April 22, 1977 for refusing to ride an unsafe belt line into Crescent's mine. On September 28, 1981, the judge issued his decision finding that McCoy was discharged on April 22, 1977 in violation of section 110(b) of the Coal Mine Health and Safety Act of 1969; ordered respondent to pay back pay and attorney fees; ordered the parties to advise him in writing by October 15, 1981, whether they had agreed on the amounts of back pay and attorney fees; suggested that further proceedings may be necessary if the parties could not reach an agreement and retained jurisdiction for the purpose of determining the proper award.

Crescent filed its petition for discretionary review on October 28, 1981 raising questions of law and fact relating to the judge's decision. On November 3, 1981 complainant filed a motion to dismiss Crescent's petition as being premature.

In *Gerald D. Boone v. Rebel Coal Company*, 3 FMSHRC 1900 (Aug. 6, 1981) and *Council of Southern Mountains, Inc. v. Martin County Coal Corporation*, 2 FMSHRC 3216 (Nov. 12, 1980) the Commission considered situations analogous to the instant and concluded that failure to resolve 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 Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et. seq. (Supp. II 1978). In those cases the petitions for review were dismissed as premature. The reasoning and decisions in those cases are applicable to this proceeding.

Accordingly, complainant's motion to dismiss is granted and the petition for discretionary review filed by Crescent Coal Company is dismissed as premature. The parties may file petitions for discretionary review in accordance with section 113 of the Federal Mine Safety and Health Act of 1977 and Commission Rule 70 (29 C.F.R. 2700.70) once the judge has made his final disposition of this proceeding.

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Distribution

David C. Stratton, Esq.

Stratton, May & Hays, PSC

P.O. Drawer 851

Pikeville, Kentucky 41501

Stephen Sanders, Esq.

Appalachian Research & Defense Fund of KY

P.O. Box 152

Prestonsburg, Kentucky 41653

Chief Administrative Law Judge

James A. Broderick

FMSHRC

1730 K Street, N.W.

Washington, D.C. 20006