

CCASE:
MSHA V. DELMONT RESOURCES
DDATE:
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TTEXT:
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 3, 1982
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

Docket No. PENN 80-268-R

v.

DELMONT RESOURCES, INC.

ORDER

In Secretary of Labor v. Cement Division, National Gypsum Company, 3 FMSHRC 821 (1981), the Commission established the test under section 104(d) of the 1977 Mine Act for determining whether a condition created by a particular violation is of such nature "as could significantly and substantially contribute to the cause and effect of a ... mine ... hazard." In the instant proceeding, a section 104(d)(1) citation was issued. On April 24, 1981, the administrative law judge issued a decision in which he applied the test enunciated in National Gypsum and determined that the "evidence [was] insufficient to sustain the allegation that the ... violation ... was of such nature as could significantly and substantially contribute to the cause and effect of a mine ... hazard." Regarding the "significant and substantial" question, the parties tried the case and submitted their post-hearing briefs prior to the issuance of National Gypsum. On review, the primary question before us is whether the judge correctly determined that the violation was not significant and substantial.

In his brief on review, the Secretary requested that the proceeding be remanded to the judge for the presentation of additional evidence if we determined that the record was insufficient under National Gypsum to sustain the section 104(d)(1) citation. On February 25, 1982, we ordered the Secretary to submit an explanation of the additional evidence that could be presented at this time to meet the National Gypsum test. On March 15, 1982, the Secretary filed a supplemental brief describing evidence he could present if the case were remanded. Neither Delmont nor the UMWA has opposed the Secretary's request for remand.

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Having considered the Secretary's response in light of the present

record, we conclude that remand is appropriate to give the parties an opportunity to present evidence relevant to the National Gypsum test.

1/ We express no views as to the probative value and weight of the evidence described by the Secretary.

Accordingly, this case is remanded to the Chief Administrative Law Judge for reassignment and further proceedings, on an expedited basis, consistent with this order. 2/

A. E. Lawson, Commissioner

1/ Section 113(d)(2)(iii)(C) of the 1977 Mine Act provides in part:

... If the Commission determines that further evidence is necessary on an issue of fact it shall remand the case for further proceedings before the administrative law judge.

2/ The administrative law judge who rendered the initial decision in this matter has since left the Commission.

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Distribution

Nancy S. Hyde, Esq.

Office of the Solicitor

U.S. Department of Labor

4015 Wilson Blvd.

Arlington, Virginia 22203

Ronald S. Cusano, Esq.

Rose, Schmidt, Dixon, Hasley

Whyte and Hardesty

900 Oliver Building

Pittsburgh, PA 15222

Raymond J. Hoehler, Esq.

Harvey A. Zalevsky, Esq.

102 N. Main Street

Suite 200

Greensburg, PA 15601

Covette Rooney, Esq.

Office of the Solicitor

U.S. Department of Labor

14480 Gateway Bldg.

3535 Market St.

Philadelphia, PA 19104

Mary Lu Jordan, Esq.

UMWA

900 15th St., N.W.

Washington, D.C. 20005

Chief Administrative Law Judge Paul Merlin

FMSHRC

1730 K Street, N.W.

Washington, D.C. 20006