CCASE:
SOL (MSHA) V. PEABODY COAL
DDATE:
19840214
TTEXT:
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
February 14, 1984
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket Nos. KENT 80-318-R
KENT 81-32

PEABODY COAL COMPANY

DECISION

The narrow issue in this case is whether an authorized representative of the Secretary of Labor, employed as a "special investigator" needed to obtain a search warrant in order to require the mine operator to produce certain accident and illness reports required to be kept by the Federal Mine Safety and Health Act of 1977, 30 U.S.C. $ 801 et seq (1976 & Supp. V 1981), and its implementing regulations. The Commission administrative law judge held that a search warrant was not required. 4 FMSHRC 447 (March 1982)(ALJ). For the reasons set forth below, we agree.

The issue in this case arose in a factual context uncontested by the parties. There was no hearing; the case was decided on the basis of joint stipulations and copies of exhibits that the parties submitted to the judge. One of the exhibits is the affidavit of Byron Culbertson, a Peabody Coal Company employee, stating that he was injured on May 9, 1977 "while timbering and crosscolaring [sic] a rock fall that had been cleared in the main north area." According to the affidavit, Culbertson informed his face boss that afternoon of the injury, and an accident report was later completed by the assistant mine foreman. Id.

Peabody submitted a standard-form "Coal Accident, Injury, and Illness Report" (SF 7000-1) concerning the rock fall to MSHA. Govt. Ex. 2. 1/ The parties stipulated that this report states that no injury occurred. On July 29, 1980, a United Mine Workers of America ("UMWA") official filed with

---

1/ The rock fall occurred while the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. $ 801 et seq. (1976) was in effect. The 1969 Coal Act was enforced by the Department of Interior's Mining Enforcement and Safety Administration (MESA). With enactment of the

1977 Mine Act, MESA's enforcement functions were transferred to the Department of Labor's Mine Safety and Health Administration (MSHA). All references here will be to MSHA.
~184
the district manager of MSHA's Madisonville, Kentucky office a written request for an inspection pursuant to section 103(g) of the Mine Act. 2/ The UMWA official's request for inspection stated:

> I have reasonable grounds to believe that a violation of Title 30, Federal Regulation Part 50.20 has occurred concerning the filing of Report Form 7000-1, at Peabody Coal Company's Ken Mine of a rock fall accident on 5/9/77.
> Byron Culbertson was injured in this accident.
> The attached copy of 7000-1 Form does not reflect that there was an injury. Therefore, I am requesting an immediate inspection (or investigation) under 103(g) of the Act to determine whether there is a violation or not.

Govt. Ex. 3. 3/ The request apparently included a copy of Peabody's "Coal Accident, Injury, and Illness Report," referred to above. MSHA found "no record of the injury suggested by the letter of the UMWA official." Stip. 6.

2/ Section 103(g) provides:

> Whenever a representative of the miners or a miner in the case of a coal or other mine where there is no such representative has reasonable grounds to believe that a violation of this Act or a mandatory health or safety standard exists, or an imminent danger exists, such miner or representative shall have a right to obtain an immediate inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, signed by the representative of the miners or by the miner, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that the operator or his agent shall be notified forthwith if the complaint indicates that an imminent danger exists. The name of the person giving such notice and the names of individual miners referred to therein shall not appear in such copy or notification. Upon receipt of such notification, a special inspection shall be made as soon as possible to determine if such violation or danger exists in accordance with the provisions of this title. If the Secretary determines that a violation or danger does not exist, he shall notify the

miner or representative of the miners in writing of such determination.
30 U.S.C. $ 813(g)(1)
3/ The issue in this proceeding is not whether Peabody in fact kept records required by the Mine Act and the regulations, but whether a warrant was required before the MSHA official could review such records. There is no dispute between the parties that the records at issue here were required records under the Act.
~185
Thereafter, the MSHA district manager sent an MSHA special investigator, Jesse Rideout, to the mine to inspect Peabody's records relating to the rock fall and purported injury. Rideout stated his purpose at the mine office to Peabody's safety director and gave him a copy of the UMWA's section 103(g) request. Rideout requested no other records. The safety director informed Rideout that Peabody previously had filed with MSHA all required reports relating to the rock fall and he refused to allow Rideout to see the records that Peabody was required to keep at the mine office. This decision not to produce the records in the absence of a search warrant was reaffirmed to Rideout in a telephone conversation with counsel for Peabody.
On instructions from counsel for the Secretary, Rideout again demanded to see the required records pertaining to the rock fall and injury. Peabody's mine superintendent repeated the company's refusal and Rideout proceeded to issue a citation and withdrawal order alleging a violation of the Mine Act which Peabody refused to abate. Peabody filed a notice of contest with the Commission challenging the citation and order and the proceeding was consolidated with MSHA's proposal for an assessment of a civil penalty. Relying primarily on the Supreme Court's decision in Donovan v. Dewey, 452 U.S. 594 (1981), the Commission administrative law judge found that Peabody violated the Mine Act by refusing to produce the requested records. The judge therefore upheld the citation and assessed a $500 civil penalty. We granted Peabody's petition for review and heard oral argument.
On review Peabody argues that the judge erred in finding "that the inspection was not of the type so random, infrequent or unpredictable that the appellant, for all practical purposes, had no real expectation that its property would from time to time be inspected by government officials." Peabody argues that a search warrant was required for this specific records request because Inspector Rideout was a "special investigator" whose appearance at the mine in response to a section 103(g) request could not have been predicted. Peabody repeatedly refers to the fact that the official duties of a special investigator include conducting investigations that, in appropriate circumstances, could lead to the institution of criminal proceedings by law enforcement officials. In Peabody's view, a warrant would not

have been required had the same request been made by a "regular" mine inspector.

We affirm the judge's conclusion that a search warrant was not required in this case. Peabody has not established that it has a privacy interest in these records necessitating the protection of a search warrant. Section 103(d) of the Mine Act requires operators to maintain accident records and make them "available to the Secretary or his authorized representative." It also provides that "[s]uch records shall be open for inspection by interested persons." 4/

4/ The complete text of section 103(d) reads as follows:

All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the

~186

In accordance with the Act, the recordkeeping regulations in effect at the time of the rock fall in 1977 (30 C.F.R. $$ 80.22, .23 and .31(a)(1977)) and the similar regulations in effect at the time of inspection in 1980 (30 C.F.R. $$ 50.20, .40, .41 (1980)), clearly delineate the operator's duty to investigate accidents and make reports of them. The operator is required to maintain the reports for five years and make them accessible on demand to the Secretary or his authorized representative as well as any interested person. Based on these statutory and regulatory provisions, we conclude that Peabody had no realistic expectation of privacy in these records. See United States v. Blue Diamond Coal Company, 667 F.2d 510, 521-22 (6th Cir. 1982)(Wiseman, J., concurring); Youghiogheny and Ohio Coal Company v. Morton, 364 F. Supp. 45, 51 n. 5 (S.D. Ohio 1973). 5/

The fact that this inspection was conducted by an MSHA "special investigator" rather than a "regular" MSHA inspector, is of no consequence. The Mine Act refers only to "authorized representatives" of the Secretary of Labor and does not distinguish between "regular" inspectors and "special investigators." The fact that the Secretary may have established different classes of authorized representatives is not relevant in the circumstances of this case. Both "regular" inspectors and "special investigators" are authorized to issue citations and orders when they discover violations of the Act, standards, and regulations, and the findings of any authorized representative may, if appropriate, be referred to the Department of Justice for possible criminal prosecution. Accordingly, Peabody's potential liability was in no way heightened by the Secretary's choice of a special investigator to conduct the statutorily authorized section 103(g) inspection. 6/

Peabody stipulated that the special investigator was an authorized representative of the Secretary. Peabody violated the Act in refusing

Fn. 4/ continued
operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents and investigations shall be kept and the information shall be made available to the Secretary or his authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons. Such records shall include man-hours worked and shall be reported at a frequency determined by the Secretary, but at least annually.
30 U.S.C. $ 813(d).
5/ Because this case involved only a request for records specifically required by the Act to be maintained, it does not present the situation faced in Sewell Coal Company, 1 FMSHRC 864 (July 1979)(ALJ). There the inspector sought to personally review accident, injury and illness and medical and compensation records at the mine. Those records were contained in individual personnel files which also contained other data not required to be maintained by the Mine Act. 1 FMSHRC at 865.
6/ We note that by their very nature section 103(g) requests and the required follow-up inspections are unpredictable. Furthermore, unless otherwise authorized, the Act prohibits giving advance notice of any inspection. 30 U.S.C. $ 820(c).
~187
him access to the records at issue without a search warrant. We emphasize that the facts stipulated by the parties establish the reasonableness of the special investigator's conduct. He arrived at the mine during normal business hours, identified himself explained the reasons for his inspection, and delivered a copy of the UMWA's section 103(g) request for inspection. When he was denied access to the required records, he sought guidance from his MSHA superiors before proceeding.
The decision of the administrative law judge is affirmed.
Richard V. Backley, Commissioner
A. E. Lawson, Commissioner
L. Clair Nelson, Commissioner
~188
Distribution
Michael 0. McKown, Esq.
Peabody Coal Company
P.0. Box 235
St. Louis, Missouri 63166
Linda Leasure, Esq.
Office of the Solicitor

U.S. Department of Labor
4015 Wilson Blvd.
Arlington, Virginia 22203
Michael Holland, Esq.
UMWA
900 15th St., N.W.
Washington, D.C. 20005