

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

January 2, 1985

ROBERT K. ROLAND :  
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 V. : Docket No. WEST 84-46-DM(A)  
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 SECRETARY OF LABOR :  
 MINE SAFETY AND HEALTH :  
 ADMINISTRATION (MSHA) :

ORDER

On August 15, 1984, the Commission granted the petition for interlocutory review filed by the Secretary of Labor. Following the solicitation of amicus curiae participation; the Commission, on October 24, 1984, issued an order establishing the briefing schedule in this case. The Secretary's brief was due within 25 days of the date of that order. On December 12, 1984, the Secretary filed a motion with the Commission seeking leave to file his brief out **of time**. The Secretary's motion states that **although** the Commission's briefing order of October 24, 1984, was received by the mail room of the Secretary's Office of the Solicitor, the order "was never logged as received, . . . and none of the attorneys of record in the case ever received the order." The Secretary requests that, if his motion is granted, his previously filed petition for interlocutory review be treated as constituting his brief. Compare Commission Procedural Rule 72(a), 29 C.F.R. § 2700.72(a).

Upon consideration of the Secretary's motion, his requests to file his brief out of time and to treat his petition for interlocutory review as his brief in this matter are granted. On December 31, 1984, the Commission received from complainant Robert A. Roland a letter dated December 21, 1984, with attachments, which he designated as his brief. This letter is hereby accepted as Mr. Roland's brief. The amicus brief of the United Mine Workers of America must be received by the Commission on or before January 31, 1985.

On December 10, 1984, Mr. Roland filed a motion requesting, among other things, immediate remand of the proceeding to the administrative law judge because of the Secretary's failure to file his brief. Mr. Roland's motion is denied. Mr. Roland's request for immediate monetary relief and damages will be considered by the Commission, along with other substantive issues presented by this case, at the appropriate time after completion of briefing.



Richard V. Backley, Acting Chairman



James A. Lastowka, Commissioner



L. Clair Nelson, Commissioner

Distribution

Robert K. Roland  
8520 Rainbow Avenue  
Denver, Colorado 80229

Vicki Shteir-Dunn, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
4015 Wilson Blvd.  
Arlington, Virginia 22203

Mary Lu Jordan, Esq.  
UMWA  
900 15th St., N.W.  
Washington, D.C. 20005