

CCASE:

ROWE, MORE & KESSINGER (UMWA) V. PEABODY COAL

DDATE:

19850204

TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C.

February 4, 1985

UNITED MINE WORKERS OF
AMERICA (UMWA) on behalf of

JAMES ROWE, et al.,

JERRY D. MOORE

and

LARRY D. KESSINGER

v.

PEABODY COAL COMPANY

DOCKET NOS. KENT 82-103-D

KENT 82-105-D

KENT 82-106-D

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

on behalf of

THOMAS L. WILLIAMS

v.

PEABODY COAL COMPANY

DOCKET NO. LAKE 83-69-D

ORDER

On December 27, 1984, the Secretary of Labor filed a motion with the Commission to dismiss or vacate a portion of the direction for review in these consolidated discrimination cases.

The Secretary's motion states that respondent Peabody Coal Company ("Peabody") and Thomas L. Williams, the individual complainant in Docket No. LAKE 83-69-D, have entered into a written agreement settling the issues of Peabody's liability to Mr. Williams for monetary damages. A copy of the signed settlement agreement is appended to the Secretary's motion.

The settlement agreement recited that it "does not constitute an admission by Peabody of any violation of section 105(c) of the Federal Mine Safety and Health Act of 1977." The Secretary requests that the Commission dismiss or vacate only that portion of the direction for review in Docket No. LAKE 83-69-D pertaining to Peabody's liability for damages to Mr. Williams. The Secretary emphasizes that the granting of his motion would not affect Commission consideration of the other issues presented in this docket--namely, whether a violation of section 105(c) of the Mine Act occurred, and, if so, the appropriate civil penalty to be assessed.

~198

Because Peabody had not joined in signing the dismissal motion

and the Commission wished to ascertain whether the parties were in agreement as to the limited scope of the dismissal sought, the Commission, on January 9, 1985, ordered Peabody to file a response to the Secretary's motion. On January 18, 1985, Peabody filed its response. Peabody indicates that it joins in the Secretary's request to vacate the direction for review "so as to indicate that the issues involving Respondent's liability to Mr. Williams for damages ... have been settled and are no longer the subject of review."

Upon consideration of the Secretary's motion, Peabody's response thereto, and the underlying settlement agreement, we grant the Secretary's motion. The direction for review in Docket No. LAKE 83-69-D is dismissed and vacated only insofar as it pertains to the issue of Peabody's liability to Mr. Williams for monetary damages. The other issues presented in that docket are not affected by today's order, and remain for our review and decision.

~199

Distribution:

Dennis D. Clark, Esq.
1100 17th St., N.W.
Suite 800
Washington, D.C. 20036
Mary Lu Jordan, Esq.
UMWA
900 15th St., N.W.
Washington, D.C. 20005
Michael O. McKown, Esq.
Peabody Coal Company
P.O. Box 373
St. Louis, Missouri 63166
Linda Leasure, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, Virginia 22203