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UMWA V. GREENWICH COLLIERIES
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, DC
June 12, 1985

LOCAL UNION 1609, DISTRICT 2
UNITED MINE WORKERS OF
AMERICA (UMWA)

v. Docket No. PENN 84-158-C

GREENWICH COLLIERIES,
DIVISION OF PENNSYLVANIA
MINES CORPORATION

BEFORE: Backley, Acting Chairman; Lastowka and Nelson,
Commissioners

ORDER

BY THE COMMISSION:

This compensation case arises under section 111 (30 U.S.C. 821) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C 801 et seq. (1982). A Commission administrative law judge dismissed a complaint for one week's compensation under section 111 filed by the United Mine Workers of America ("UMWA") following an explosion resulting in closure of a mine owned by respondent Greenwich Collieries, Division of Pennsylvania Mines Corporation ("Greenwich"). 6 FMSHRC 2465 (October 1984)(ALJ). The UMWA had based its compensation claim on its assertion that the mine was closed, for purposes of section 111 compensation, by an imminent danger order issued pursuant to section 107 of the Mine Act, 30 U.S.C. 817, and that order was issued because of Greenwich's violations of mandatory standards. On November 19, 1984, the Commission granted the petition for discretionary review filed by the UMWA.

In its petition the UMWA requested, inter alia, that the

proceeding be remanded to the administrative law judge pending release of an accident investigation report concerning the mine explosion being conducted by the Department of Labor's Mine Safety and Health Administration ("MSHA"). By letter dated April 24, 1985, counsel for the UMWA provided the Commission with copies of withdrawal orders issued to Greenwich by MSHA on March 29, 1985, pursuant to section 104(d)(1) of the Mine Act. 30 U.S.C. 814(d)(1). Counsel stated that the full MSHA accident report would be completed in May 1985, and requested that the matter be remanded to the

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judge for consideration of MSHA's report. The essence of the UMWA's position is that the subsequently issued section 104(d) orders, when read in conjunction with the preceding imminent danger order, may serve as a basis for section 111 compensation. Greenwich has responded in opposition to the requested remand.

Treating the UMWA's request as a motion, we deny the motion.

The judge dismissed the UMWA's compensation complaint on two grounds: (1) that the mine was idled initially by an order issued under section 103 of the Mine Act, 30 U.S.C. 813; and (2) that the subsequent section 107 imminent danger order did not contain allegations of a violation of mandatory safety or health standards, a precondition, in the judge's view, for entitlement to one week's compensation under section 111 of the Act. 6 FMSHRC at 2477-78. We read the judge's decision to have rejected the contention that subsequently issued section 104 orders may serve as a basis for an award of compensation under the circumstances presented in this case. See 6 FMSHRC 2476-78. Thus, a remand for his consideration of the recently issued withdrawal orders would therefore serve no practical purpose and would result in delay. 1/

Accordingly, the UMWA's motion for a remand is denied. In view of our ruling, the UMWA may file no later than Wednesday, July 3, 1985, a supplemental brief focusing on the asserted legal effect of the recently issued section 104 withdrawal orders. Any response by Greenwich to such supplemental brief is due within 20 days after the UMWA's brief is served. 2/

Richard V. Backley, Acting Chairman

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

1/ We also have pending on review two other cases presenting very similar, or identical issues: Local Union 1889, District 17, United Mine Workers of America v. Westmoreland Coal Co., Docket No. WEVA 81-256-C (involving review of judge's decision following the Commission's remand to him in its Westmoreland decision, *supra*); and Local Union 2274, District 28, United Mine Workers of America v. Clinchfield Coal Co., Docket No. VA 83-55-C.

2/ Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823(c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.

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