CCASE:
MSHA V. 4-A COAL
DDATE:
19860625
TTEXT:

FMSHRC-WDC
JUN 25, 1986

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
on behalf of DONALD R. HALE

v. Docket No. VA 85-29-D

4-A COAL COMPANY, INC.

BEFORE: Backley, Doyle, Lastowka, and Nelson, Commissioners

DECISION

BY THE COMMISSION:

This discrimination proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. $ 801 et seq. (1982), presents the question of whether the administrative law judge properly granted the operator's motion to dismiss the Secretary of Labor's discrimination complaint alleging that Donald R. Hale's discharge by 4-A Coal Company ("4-A") was in violation of the Mine Act. Mr. Hale had filed a timely discrimination complaint with the Department of Labor's Mine Safety and Health Administration ("MSHA"), but the Secretary did not file his complaint before the Commission until more than two years later. Respondent 4-A moved to dismiss the Secretary's complaint as untimely. The presiding judge, Commission Administrative Law Judge Joseph B. Kennedy, granted 4-A's motion and dismissed the complaint. 7 FMSHRC 1552 (October 1985)(ALJ). For the reasons that follow, we reverse and remand for further proceedings.

4-A operated the No. 4 Mine, an underground coal mine located in Buchanan County, Virginia. The Secretary's complaint alleges that 4-A discriminated against Hale when it discharged him on June 16,

1983, for making safety complaints to management about the lack of a methane monitor on his scoop. 1/ Five days after his discharge, Hale filed a timely discrimination complaint with MSHA. The Secretary notified 4-A of Hale's complaint and commenced an investigation to determine whether

_____

1/ A scoop is a mechanized vehicle used primarily to transport coal from the face to the dumping point.

a violation of the Mine Act had occurred. On August 14. 1985. more than two years after Hale's initial complaint to MSHA, the Secretary filed a discrimination complaint with the Commission on Hale's behalf after determining that 4-A had violated the Mine Act.

On September 3, 1985, in response to the Secretary's complaint, 4-A filed with the Commission an answer and a motion to dismiss the proceeding. As grounds for its motion to dismiss, 4-A contended that the Secretary had failed to file his complaint "immediately" with the Commission pursuant to section 105(c)(2) of the Mine Act, 30 U.S.C. $ 815(c)(2), as evidenced by the two-year delay in filing. Counsel for the Secretary did not file a response to 4-A's motion to dismiss. The administrative law judge subsequently granted 4-A's unopposed motion and dismissed the Secretary's complaint. 7 FMSHRC at 1552. The Secretary then filed a motion for reconsideration, which 4-A opposed. The judge had issued a dispositive order in the case and therefore denied the Secretary's motion on both legal and jurisdictional grounds. Order dated October 25, 1985. 2/ The Secretary petitioned the Commission for discretionary review of the judge's order of dismissal, and we directed the case for review.

At the outset we reject the Secretary's argument that the Commission's procedural rules obligated the judge to issue an order to show cause before he dismissed this case. Commission Procedural Rule 63(a) provides:

> Generally. When a party fails to comply with an order of a judge or these rules, an order to show cause shall be directed to the party before the entry of any order of default or dismissal.

29 C.F.R. $ 2700.63(a)(emphasis added). While Rule 63 addresses the subject of summary disposition of proceedings, it applies only under the specified circumstances. Neither a failure to comply with an order of a judge nor a rule of procedure was involved here. Rather, the Secretary decided not to file a statement in opposition to 4-A's motion to dismiss as permitted by our rules. 29 C.F.R. $ 2700.10(b). The judge was under no procedural obligation to issue an order to show cause prior to granting 4-A's motion to dismiss. Cf. 29 C.F.R. $ 2700.64(c); Fed. R. Civ. P. 56(e) (if a party does not respond to a summary judgment motion, judgment, if appropriate, may be entered against him).

We also find no merit in the Secretary's argument that the judge's dismissal of the complaint was intended as a sanction for the

Secretary's

_____

2/ Commission Procedural Rule 65(c) in part provides, "The jurisdiction of the Judge terminates when his decision has been issued by the Executive Director." 29 C.F.R. $ 2700.65(c). Inasmuch as the judge no longer had jurisdiction over the case, his discussion of the merits of the Secretary's motion for reconsideration has no legal effect.

failure to respond to 4-A's motion to dismiss. In his order of dismissal, the judge stated:

> [T]he operator filed and served a motion to dismiss the captioned wrongful discharge case on the grounds it was untimely. Under the Commission Rules, the Secretary had 10 days to respond. The Secretary having failed to respond or otherwise oppose the operator's motion or to seasonably move for an enlargement of time, it is ORDERED that the operator's motion be, and hereby, is GRANTED and the case DISMISSED. See Rules 9, 10, and 41.

7 FMSHRC at 1552. We find nothing in the text of the judge's decision compelling the conclusion that the dismissal was intended as a sanction for the Secretary's failure to respond. Furthermore, the Commission rules cited by the judge are logically relevant to his decision. We also find unpersuasive the Secretary's statement that 4-A's dismissal motion, "given its legal and factual deficiencies, did not appear to warrant a response." Any motion to dismiss a complaint is a serious matter not to be ignored, particularly where, as here, an innocent party is dependent upon the Secretary's prosecution of his claim. We expect that in the future the Secretary will not treat motions to dismiss discrimination complaints so cavalierly.

Turning to the substantive ground advanced in the motion to dismiss, and therefore the ground controlling the judge's dismissal order, 4-A summarily contended that the Secretary failed to file his complaint "immediately" with the Commission pursuant to section 105(c)(2) of the Mine Act, as evidenced by his two-year delay in filing. We find this bare ground, without more, to be legally insufficient to sustain the motion and therefore conclude that the judge erred in granting it.

The Mine Act requires the Secretary to proceed with expedition in investigating and prosecuting a miner's discrimination complaint. The Secretary is required to act within the following time frames: (1) The investigation of a miner's complaint "shall commence within 15 days" of receipt of the miner's complaint (30 U.S.C. $ 815(c)(2)); (2) the Secretary "shall notify" the miner, in writing, of his determination as to whether a violation of section 105(c)(1) of the Mine Act has occurred "[w]ithin 90 days" of receipt of the miner's complaint (30 U.S.C. $ 815(c)(3)); and (3) if the Secretary determines that there has been a violation of the Act, "he shall immediately file a complaint with the Commission" 30 U.S.C. $ 815(c)(2). (Emphasis

added throughout.) 3/ Finally, section

_____

3/ The Commission's rules of procedure implement these provisions. Commission Procedural Rule 41(a) addresses the Secretary's obligation under 30 U.S.C. $ 815(c)(2) to file his complaint "immediately" with the Commission by requiring that the filing be accomplished within 30 days of the Secretary's written determination that a violation has occurred. 29 C.F.R. $ 2700.41(a). Similarly, Commission Procedural Rule 40(b) protects miners from investigative delays by permitting them to file complaints with the Commission on their own behalf, pursuant to 30 U.S.C. $ 815(c)(3), if the Secretary fails to make his written determination of violation within the 90-day period prescribed in 30 U.S.C. $ 815(c)(2). 29 C.F.R. $ 2700.40(b).

105(c)(3) of the Act specifically states, "Proceedings under this section shall be expedited by the Secretary and the Commission." 30 U.S.C. $ 815(c)(3).

While the language of section 105(c) leaves no doubt that Congress intended these directives to be followed by the Secretary, the pertinent legislative history nevertheless indicates that these time frames are not jurisdictional:

> The Secretary must initiate his investigation within 15 days of receipt of the complaint, and immediately file a complaint with the Commission, if he determines that a violation has occurred. The Secretary is also required under section 10[5](c)(3) to notify the complainant within 90 days whether a violation has occurred. It should be emphasized, however, that these timeframes are not intended to be jurisdictional. The failure to meet any of them should not result in the dismissal of the discrimination proceedings; the complainant should not be prejudiced because of the failure of the Government to meet its time obligations.

S. Rep. No. 181, 95th Cong., 1st Sess. 36 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2nd Sess., Legislative History of the Federal Mine Safety and Health Act of 1977 at 624 (1978) ("Legis. Hist."). Plainly, Congress clearly intended to protect innocent miners from losing their causes of action because of delay by the Secretary.

Related passages of legislative history make equally clear, however, that Congress was well aware of the due process problems that may be caused by the prosecution of stale claims. See Legis. Hist. at 624 (discussion of 60-day time limit for the filing of miner's discrimination complaint with the Secretary). The fair hearing process envisioned by the Mine Act does not allow us to ignore serious delay by the Secretary in filing a discrimination complaint if such delay prejudicially deprives a respondent of a meaningful opportunity to defend against the claim.

Accordingly, we hold that the Secretary is to make his determination of whether a violation occurred within 90 days of the filing of the miner's complaint and is to file his complaint on the miner's behalf with the Commission "immediately" thereafter -- i.e., within 30 days of his determination that a violation of section 105(c)(1) occurred. If the Secretary's

complaint is late-filed, it is subject to dismissal if the operator demonstrates material legal prejudice attributable to the delay. Cf. David Hollis v. Consolidation Coal Co., 6 FMSHRC 21, 23-25 (January 1984), aff'd mem., 750 F.2d 1093 (D.C. Cir. 1984)(table); Walter A. Schulte v. Lizza Industries, Inc., 6 FMSHRC 8, 12-14 (January 1984).

Applying these principles to the present record, there is no question that the Secretary seriously delayed in filing the complaint. 4/ Nevertheless, the record before the judge did not establish that the Secretary's delay prejudiced 4-A. In the absence of this requisite foundation, the judge erred in granting 4-A's motion to dismiss.

On the foregoing bases, we therefore reverse the decision of the administrative law judge, reinstate the Secretary's complaint and remand the case for further proceedings consistent with this opinion. 5/

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

_____

4/ We reject the Secretary's contention that because he filed his complaint within 30 days of determining that a violation had occurred, he acted in a timely fashion. This contention ignores the 90-day time frame specified in section 105(c)(3) and the possibly prejudicial effect of the considerable delay involved here.

5/ Chairman Ford did not participate in the consideration or disposition of this matter.

~910
Distribution

Linda L. Leasure, Esquire
U.S. Department of Labor
Office of the Solicitor
4015 Wilson Boulevard
Suite 400
Arlington, Virginia 22203

Donald R. Hale
P.0. Box 1075
Raven, Virginia 24639

C.R. Bolling, Esquire
1600 Front Street
P.0. Drawer L
Richlands, Virginia 24641

Administrative Law Judge Joseph B. Kennedy
Federal Mine Safety and Health Review Commission
5203 Leesburg Pike, lOth Floor
Falls Church, Virginia 22041