

CCASE:  
UMWA V. WESTMORELAND COAL  
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FMSHRC-WDC  
JULY 1, 1987

LOCAL UNION 1889. DISTRICT 17,  
UNITED MINE WORKERS OF  
AMERICA (UMWA)

v. Docket No. WEVA 81-256-C

WESTMORELAND COAL COMPANY

and

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

BEFORE: Backley, Doyle, Lastowka and Nelson, Commissioners

ORDER

BY THE COMMISSION:

This compensation proceeding under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), was commenced in 1981 and, on cross-petitions for interlocutory review, is before the Commission for the third time. The petitions are granted and, because time is of the essence at this stage of this protracted litigation, briefing is suspended and we dispose of the petitions by summary order. On the following bases, this matter is remanded to presiding Judge Gary Melick.

In September 1986, the Commission remanded this case for further proceedings to determine whether a nexus sufficient to support an award of compensation existed between certain violations of mandatory standards and the mine explosion and imminent danger order involved in this case. 8 FMSHRC 1317, 1329-30 (September 1986). We additionally stated: "If such a relationship is determined, the

judge shall take appropriate action to identify the affected miners and the amount of compensation due to each." 8 FMSHRC at 1330. On the remand proceedings before Judge Melick, the parties became engaged in disputes as to the scope and the terms and conditions of discovery. Following certain rulings by the judge in a May 20, 1987 order, the parties filed these cross-petitions for interlocutory review seeking review of that order. Upon receipt of the petitions, the Commission stayed further proceedings before the judge.

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With respect to the petition filed by respondent Westmoreland Coal Company ("Westmoreland"), we hold that the judge erred in treating the individual miner claimants as mere witnesses to this proceeding entitled to payment of witness fees for participation in the depositions sought by Westmoreland. In our practice in compensation proceedings, the individual miner claimants are deemed to be parties (see generally *UMWA Dist. No. 31 v. Clinchfield Coal Co.*, 1 IBMA 31, 47 (1971)), even if their miner's representative, as here, is actually prosecuting the compensation complaint as a party on their behalf. (30 U.S.C. § 821; 29 C.F.R. § 2700.4(a).) The general rule in federal practice is that parties ordinarily are not entitled to the payment of witness fees, and we reverse the judge's authorization of such fees in the circumstances of this proceeding. See, e.g., *Barth v. Bayou Candy Co., Inc.*, 379 F.Supp. 1201, 1205 (E.D. La. 1974).

Concerning the UMWA's petition, for the reasons stated above, we reject the UMWA's contention that the individual miner parties are entitled to special witness protection under Commission Procedural Rule 59, 29 C.F.R. § 2700.59 (protection from disclosure of the names of miner witnesses and informants). Further, we affirm the judge's ruling that Westmoreland may depose the miners on the subject of the circumstances of their idlement. This subject is clearly relevant in discovery by either party and is within the scope of our remand order. Cf. *Loc. U. No. 781, Dist. 17. UMWA v. Eastern Assoc. Coal Corp.*, 3 FMSHRC 1175, 1176-79 (May 1981). However, we hold that the question of whether any of the miners received state unemployment compensation is irrelevant to this proceeding and may not be pursued in discovery. Cf., e.g., *Boich v. FMSHRC*, 704 F.2d 275, 286-87 (6th Cir.), vacated in other part on other grounds, 719 F.2d 194, 196 (6th Cir. 1983).

Finally, all participants in this six-year litigation must be aware of the need to move with dispatch to resolve the issues remaining so that this proceeding may be concluded at the earliest possible date.

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On the foregoing grounds, our previously directed stay is dissolved and this matter is remanded to the judge for expeditious proceedings consistent with this order. \*/

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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

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