

CCASE:
EMERY MINING V. MSHA
DDATE:
19880329
TTEXT:
FMSHRC-WDC
March 29, 1988
UTAH POWER & LIGHT COMPANY,
Substituted for
EMERY MINING CORPORATION
v.

Docket Nos. WEST 86-131-R
WEST 86-140-R
WEST 86-141-R

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)
and
UNITED MINE WORKERS OF
AMERICA (UMWA)

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,
Commissioners

DECISION

BY THE COMMISSION:

These proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), and pose the same issues that are presented in Emery Mining Corp., 10 FMSHRC, Docket No. WEST 86-126-R (March 1988), issued this date. The parties stipulated that the decision in each of these three cases would be controlled by the disposition of Emery. Accordingly, we consolidate these three cases for purposes of decision.

For the reasons expressed by the Commission in Emery, the administrative law judge's decisions in these cases are affirmed insofar as they hold that under section 103(f) of the Mine Act a nonemployee may accompany an inspector as a miners' representative during a physical inspection of a mine and that the failure of a nonemployee miners' representative to file the identifying information required under 30 C.F.R. Part 40 does not by itself permit the mine operator to deny the miners' representative entry into its mines. Further, the judge's decisions are reversed insofar as they hold that under the Mine Act the mine operator could not require the nonemployee miners' representative to sign a waiver of liability as a condition of entry into its mines.

For the reasons stated in his separate opinion in Emery, incorporated herein by reference, Chairman Ford would reverse the judge as to the Part 40 issue. For the reasons stated in their separate

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opinion in Emery, also incorporated herein by reference, Commissioners Doyle and Nelson would affirm the judge on the waiver of liability issue.

Accordingly, consistent with the stipulations of the parties and the Commission's decision in Emery, the administrative law judge's decisions in these three cases are affirmed in part and reversed in part.

Ford B. Ford, Chairman
Richard V. Backley, Commissioner
Joyce A. Doyle, Commissioner
James A. Lastowka, Commissioner
L. Clair Nelson, Commissioner

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