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UMWA V. CLINCHFIELD COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
November 28, 1988

LOCAL UNION 2274, DISTRICT 28,
UNITED MINE WORKERS OF AMERICA

v. Docket No. VA 83-55-C

CLINCHFIELD COAL COMPANY

BEFORE: Backley, Doyle, Lastowka and Nelson, Commissioners

DECISION

BY THE COMMISSION:

This compensation proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. $ 801 et seq. (1982) ("Mine Act" or "Act"). We previously remanded this matter for further proceedings to determine whether a causal nexus existed between an imminent danger withdrawal order and violations of mandatory standards and, if such a nexus were found, to award specific sums of compensation due miners idled by that order. 8 FMSHRC 1310 (September 1986). On remand, the parties stipulated that such a nexus existed and Commission Administrative Law Judge Gary Melick awarded compensation including prejudgment interest but denied the claim of complainant United Mine Workers of America ("UMWA") for attorney's fees and costs. 9 FMSHRC 1276 (July 1987) (ALJ). We granted petitions for discretionary review filed by both parties. For the reasons that follow, we affirm the judge's award of prejudgment interest on the compensation due and his denial of attorney's fees and costs. We further announce a modification in the method of calculating interest in both compensation and discrimination cases arising under the Mine Act.

I.

Factual and Procedural Background

The compensation claim at issue arose following an underground explosion on June 21, 1983, at the McClure No. 1 underground coal mine of Clinchfield Coal Company ("Clinchfield") located in Dickerson County,

Virginia. On the morning of June 22, 1983, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA") issued to Clinchfield a withdrawal order, pursuant to section 103(k) of the Mine Act, 30 U.S.C. $ 813(k), affecting the entire mine. Later hat same morning, the inspector issued to Clinchfield an imminent danger withdrawal order, under section 107(a) of the Act, 30 U.S.C. $ 817(a), also affecting the entire mine. The imminent danger order was terminated on July 18, 1983, and on September 30, 1983, the UMWA filed a complaint for one-week compensation pursuant to the third sentence of section 111 of the Act on behalf of the miners idled due to the imminent danger order. 1/

On March 26, 1984, MSHA issued to Clinchfield one citation and four withdrawal orders pursuant to section 104(d)(1) of the Act, 30 U.S.C. $ 814(d)(1), three of which alleged that the cited violations had resulted in a methane ignition causing the June 21 explosion at the McClure No. 1 Mine.

In a summary decision issued on July 23, 1984, the Commission

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1/ In relevant part, section 111 of the Act, as codified, provides:

> Entitlement of miners to full compensation
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> [1] If a coal or other mine or area of such mine is closed by an order issued under section 103, section [104], or section [107], all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. [2] If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. [3] If a coal or other mine or area of such mine is closed by an order issued under section [104] or section [107] of this title for a failure of the operator to comply with any mandatory health or safety standards, all miners who are idled due to such order shall be fully compensated after all interested parties are given an opportunity for a public hearing, which shall be expedited in such cases,

> and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser.

30 U.S.C. $ 821 (sentence numbers added).

administrative law judge originally assigned to hear the case denied the UMWA's compensation claim. 6 FMSHRC 1782 (July 1984) (ALJ). Despite taking official notice of MSHA's accident investigation report, he regarded as decisive MSHA's failure to actually modify the imminent danger order to expressly allege a violation of a mandatory standard and, accordingly, dismissed the compensation claim. 6 FMSHRC at 1784. The Commission granted the UMWA's petition for discretionary review.

In our decision reversing the judge, we held that: the initial section 103(k) control order did not preclude MSHA's subsequent issuance of the section 107(a) imminent danger withdrawal order and for purposes of section 111 one-week compensation, the mine was closed by" and the miners were idled "due to" the imminent danger order; an imminent danger order need not itself allege a violation of a mandatory standard in order to trigger entitlement to one-week compensation; and allegations of violations cited subsequently by MSHA in section 104 citations or orders may supply the required nexus between the imminent danger order and a violation of a mandatory standard. 8 FMSHRC at 1313-14. We noted that Clinchfield had not contested the subsequently issued section 104(d)(1) citation and withdrawal orders and that the UMWA had asserted that the allegations of violation contained therein provided the requisite nexus. 8 FMSHRC at 1314. We remanded for a determination whether such nexus existed and, if so, for award of the specific sums of compensation due the miners idled by the imminent danger order. Id. 2/

In subsequent proceedings before Judge Melick, the parties stipulated that "a causal nexus existed between the 107(a) order issued to Clinchfield's McClure No. 1 Mine ... and a violation of a mandatory standard in the ... Mine." 9 FMSHRC at 1277. 3/ They also stipulated to a list of miners on whose behalf the UMWA was seeking compensation, their rates of pay as of June 23, 1983, and the amount of compensation sought on behalf of each such miner. Id. The UMWA further requested interest on the compensation award and also sought attorney's fees and costs. In preservation of its appeal rights, Clinchfield repeated the same legal arguments in objection to compensation that it had raised before the Commission during the preceding review of the case.

The judge rejected Clinchfield's objections to compensation as having been disposed of by our first decision in this matter. 9 FMSHRC at 1277. Based on the parties' stipulations, he found that a causal nexus existed between the imminent danger withdrawal order and

an underlying violation of a mandatory standard. 9 FMSHRC at 1276-77. Accordingly, he concluded that the miners on the stipulated list were

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2/ Our Clinchfield decision was one of three similar cases issued the same date resolving significant compensation issues. The other two decisions were Loc. U. 1889, UMWA v. Westmoreland Coal Co., 8 FMSHRC 1317 (September 1986); and Loc. U. 1609, UMWA v. Greenwich Collieries, Div. of Penn. Mines Corp., 8 FMSHRC 1302 (September 1986).

3/ Because the judge who had originally heard the case had retired from the Commission, the case was reassigned on remand.

entitled to the lost wages set forth in the list. Citing Peabody Coal Co., 1 FMSHRC 1785 (November 1979) and Youngstown Mines Corp., 1 FMSHRC 990 (August 1979), cases arising under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. $ 801 et seq. (1976)(amended 1977)("the 1969 Coal Act"), he granted the UMWA's request for prejudgment interest on the compensation. Id. He ruled that the interest was to be calculated according to the formula established for determining interest on back pay awards in discrimination cases set forth in Secretary on behalf of Bailey v. Arkansas-Carbona Co., 5 FMSHRC 2042 (December 1983). Id. Finally, relying on Alyeska Pipeline Service Co. v. The Wilderness Soc., 421 U.S. 240 (1975), he denied the UMWA's claims for attorney's fees and costs. Id.

Before us the UMWA contests the judge's denial of attorney's fees and costs. The UMWA additionally requests the Commission to modify the method of calculating interest to accord with the revised back pay interest formula of the National Labor Relations Board ("NLRB") announced in New Horizons for the Retarded, Inc., 283 NLRB No. 181, 125 LRRM 1177 (May 28, 1987). Clinchfield reasserts its legal objections to awarding compensation in this matter. It also challenges the judge's award of interest and, in any event, notes that the NLRB's new method of calculating interest has caused the Commission's Arkansas-Carbona formula to become outdated.

II.

Disposition

A. Clinchfield's objections to compensation

Clinchfield has reiterated its basic objections to an award of compensation in this case -- that the miners were not idled due to the imminent danger order because the mine had been closed initially by the section 103(k) control order, and that the imminent danger order cannot trigger compensation because it did not allege on its face a violation of a mandatory standard. These same points were raised, considered, and decided adversely to Clinchfield in our first decision. See 8 FMSHRC at 1313-14. See also Westmoreland, supra, 8 FMSHRC at 1323-30. However, in a letter submitted after its brief and served on all parties in this case, Clinchfield asserts that the intervening decision in Int'l U., UMWA v. FMSHRC, 840 F.2d 77 (D.C. Cir. 1988), rev'g Loc. 5817, UMWA v. Monument Mining Corp., etc., 9 FMSHRC 209 (February 1987), supports its argument that an imminent danger order must allege on its face a violation of a

mandatory standard in order to initiate an award of one-week compensation. We disagree.

Int"l U., UMWA involved the distinct issue of an owner-operator's liability for compensation based upon a withdrawal order issued to an independent contractor. In reversing a split opinion by the Commission holding that "the 'operator' responsible for the conditions or violations underlying the section 111 claim is the sole operator responsible for compensating the idled miners" (Monument Mining, supra, 9 FMSHRC at 212), the Court commented upon one of its prior decisions

concerning the compensation provisions of the 1969 Coal Act:

> Some of the language in the ... [Commission's Monument Mining] opinion could be read ... to suggest a role for the Administrative Law Judge in the section 111 compensation proceeding in determining whether the cited operator was alone responsible for the underlying violation. Such an interpretation would be in tension with this court's holding (in a case under the Coal Act) that a compensation order could be based only on the withdrawal order "as issued," and not on the underlying facts which might have justified a broader order. District 6, UMWA v. Department of the Interior Bd. of Mine Operations Appeals, 562 F.2d 1260, 1263 (D.C. Cir. 1977).

840 F.2d at 80 n.5 (emphasis added). See also 840 F.2d at 84 n. 14. The District 6 decision cited by the court was an opinion under the 1969 Coal Act affirming Billy F. Hatfield v. Southern Ohio Coal Co., 4 IBMA 259 (1975), which we discussed and distinguished in our Westmoreland compensation decision. 8 FMSHRC at 1328-29 n.5.

In the District 6 proceedings, the D.C. Circuit and the Interior Board of Mine Operations Appeals had rejected the UMWA's claim that it should be permitted to allege and prove in a compensation proceeding that an imminent danger withdrawal order was actually based on conditions that would have justified issuance of a withdrawal order pursuant to 30 U.S.C. $ 814(c)(1976)(amended 1977), based on an operator's "unwarrantable failure" to comply with a mandatory health or safety standard. If established, such proof would have supported a claim for one-week compensation. See 4 IBMA at 265-69; 562 F.2d at 1263-68. 4/ As we explained in Westmoreland, we believe that the holding in District 6 was based on the conclusion that the UMWA's attempt to prove unwarrantable failure in pursuit of a larger award of compensation improperly usurped the Secretary's enforcement and prosecutory role in issuing appropriate withdrawal orders. 8 FMSHRC at 1328-29 n.5. Here, however, the Secretary as the enforcer of the Act has issued the requisite imminent danger order capable of supporting a one-week compensation claim under section 111 since such order was issued due to Clinchfield's failure to comply with mandatory safety standards. The UMWA has not been attempting to prove "underlying facts which might have justified a broader order" (Int'l U., UMWA, supra, 840 F.2d at 80 n.5). A District 6 issue would be posed in this matter if the Secretary had issued only the initial section 103(k) control order and, absent an imminent danger order or a section 104 withdrawal order,

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4/ Under the Coal Act only a withdrawal order based on the operator's unwarrantable failure could trigger entitlement to one-week compensation. See 30 U.S.C. $ 820(a)(1976)(amended 1977). In contrast, under the third sentence of section 111 of the Mine Act (n.1 supra), one week compensation may be triggered when imminent danger orders are issued under section 107 or withdrawal orders are issued under section 104.

the UMWA had sought to prove, in pursuit of a one-week compensation claim, that the underlying conditions would have justified issuance of an imminent danger order or a section 104 withdrawal order. Thus, the concerns addressed in District 6, and referred to in passing by the court in Int'l U., UMWA, are not present here. 5/

Finally, we reemphasize our view that the argument that a section 107 imminent danger order must allege a violation on its face in order to initiate one-week compensation is at odds with section 111, the purposes of the Act, and the last sentence of section 107(a), 30 U.S.C. $ 817(a), which expressly. permits the subsequent issuance of a citation for any violation allegedly involved in the imminent danger. See Westmoreland, 8 FMSHRC at 1327-28. As was the case in this matter, imminent danger orders are often issued under urgent circumstances. As stated in Westmoreland:

> [T]he overriding purpose of an imminent danger order is the immediate withdrawal of miners.... [D]ue to the dangerous conditions giving rise to the order, inspection or investigation of the area to determine the existence of any underlying violations may be delayed necessarily until long after the order was issued or until the imminent danger no longer exists.

8 FMSHRC at 1328 (emphasis in original).

For the foregoing reasons, and as more fully discussed in our prior decision, we reaffirm our rejection of Clinchfield's objections to one-week compensation in this matter.

B. Award of attorney's fees and costs

The UMWA seeks review of the judge's denial of its request for attorney's fees and costs. The judge based his denial on Alyeska

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5/ In this proceeding we have permitted the UMWA to attempt to establish a nexus between the issuance of an imminent danger withdrawal order and an underlying violation of a mandatory standard. However, a showing of nexus -- since stipulated to by the parties -- does not usurp any Secretarial role, because the Secretary fulfilled her role by issuing the imminent danger order and a citation and several withdrawal orders containing allegations of violations of mandatory standards. Section 111 does not require the Secretary to set forth compensation-relevant nexus findings in her withdrawal orders or related enforcement actions. See

Westmoreland, 8 FMSHRC at 1327-30. As we made clear recently in a similar context, citations and withdrawal orders issued by the Secretary integrally pertain to the Act's enforcement and civil penalty scheme, while the nexus concept referred to herein arises solely in the compensation sphere. See Loc. U. 2333, UMWA v. Ranger Fuel Corp., 10 FMSHRC 612, 620-21 (May 1988). As the D.C. Circuit observed in Int'l U., UMWA, the Secretary plays no role in compensation proceedings. 840 F.2d at 81-82 & n.6.

Pipeline, supra, in which the Supreme Court endorsed the "American Rule" that attorney's fees are not ordinarily recoverable by the prevailing party in federal litigation in the absence of statutory authorization. See 421 U.S. at 247-71. In decisions issued one month after the judge's decision in this matter, we concluded that private attorney's fees are not awardable under the Mine Act to a complainant who retains private counsel in a discrimination complaint proceeding brought by the Secretary of Labor on the complainant's behalf pursuant to section 105(c)(2) of the Act, 30 U.S.C. $ 815(c)(2). Odell Maggard v. Chaney Creek Coal Corp., etc., 9 FMSHRC 1314, 1322 23 (August 1987), pets. for review filed, No. 87-1494 (D.C. Cir. September 17 & 21, 1987); John A. Gilbert v. Sandy Fork Mining Co., Inc., 9 FMSHRC 1327, 1339 n.6 August 1987), pet. for review filed, No. 87-1499 (D.C. Cir. September 21, 1987).

We based our attorney's fees holding in Maggard and Gilbert upon our acquiescence, absent contrary judicial authority, in the Fourth Circuit's decision in Eastern Assoc. Coal Corp. v. FMSHRC, 813 F.2d 639, 643-44 (4th Cir. 1977), reversing the Commission's former policy announced in Secretary on behalf of Robert A. Ribel v. Eastern Assoc. Coal Corp., 7 FMSHRC 2015, 2021-27 (December 1985). The Fourth Circuit generally founded its rejection of private counsel fees and costs in section 105(c)(2) discrimination proceedings upon Alyeska Pipeline's affirmation of the "American Rule." 813 F.2d at 643. The Fourth Circuit discerned no statutory authorization for private counsel fees and costs in connection with a discrimination complaint brought by the Secretary pursuant to section 105(c)(2), and contrasted that situation with section 105(c)'s express allowance of such fees and costs to successful complainants in a section 105(c)(3) proceeding. 813 F.2d at 644. Thus, under the "American Rule" applied to the Mine Act as set forth in the Fourth Circuit's Ribel decision, attorney's fees are not available to prevailing litigants under the Mine Act, except where the Act specifically authorizes such fees.

Neither section 111 nor any other provision of the Mine Act provides for an award of attorney's fees and costs in compensation proceedings. The Act's legislative history is silent on this subject. In the absence of specific statutory authorization, therefore, we follow the "American Rule" in this context and affirm the judge's disallowance of attorney's fees and costs. Alaskan Pipeline, supra; Ribel (4th Cir.), supra; Maggard, supra; and Gilbert, supra.

C. Interest issues

Two major interest issues are presented: whether interest is

due on compensation awards under section 111 and, if so, whether prejudgment interest may be allowed; also, if interest is available, how are its rate and amount to be calculated? In cases arising under the Coal Act, the Commission allowed interest on compensation awards, and we perceive no reason to adopt a more restrictive rule under the expanded compensation provisions of the Mine Act.

1. Interest on compensation awards and prejudgment interest

With respect to the first issue, interest is the compensation allowed by law on the use or detention of money (e.g., 45 Am. Jur. 2d, Interest and Usury $ 1 (1969)), and reflects the value of money over time. Interest is not a penalty but is merely an appropriate recompense for the loss over time of the use of money. See, e.g., Clark v. Paul Revere Life Ins. Co., 417 F.2d 683, 686 (8th Cir. 1969); United States v. United Drill & Tool Corp., 183 F.2d 998, 999 (D.C. Cir. 1950). As we have analogously determined with regard to the Mine Act s anti-discrimination provisions:

> The miner [who has suffered discrimination] has not only lost money when he or she has not been paid in violation of section 105(c), but has also lost the use of the money. As the NLRB has stated with regard to interest on back pay awards under the National Labor Relations Act, "[t]he purpose of interest is to compensate the discriminatee for the loss of the use of his or her money." Florida Steel-Corp., 231 NLRB 651, 651 (1977).

Arkansas Carbona, supra, 5 FMSHRC at 2050.

Section 111 compensation replaces pay that miners have lost as the result of an idlement attributable to the issuance of withdrawal orders specified in section 111. See generally Westmoreland, 8 FMSHRC at 1323-24. See also Int'l U., UMWA, supra, 840 F.2d at 81-82 & n.6; see also S. Rep. No. 181, 95th Cong., 1st. Sess. 46-47 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 634-35 (1978) ("Legis. Hist.") When miners lose pay because of an idling order, they also lose the use of that pay. Thus, interest on a section 111 award operates to compensate miners for the loss of use of their money over a period of time.

Section 111, like its predecessor, section 110(a) of the Coal Act, 30 U.S.C. $ 820(a)(1976)(amended 1977), does not expressly provide for interest on compensation. However, as we recognized in approving interest on compensation awards under the Coal Act, we conclude that interest is implied within section III's remedial pay protection scheme. See Youngstown, supra, 1 FMSHRC at 995-96; Peabody, supra, 1 FMSHRC at 1792. As we observed in Youngstown: "It is well settled that the omission of a mention of interest in [federal] statutes which create obligations does not show necessarily a Congressional intent to deny interest." 1 FMSHRC at 996, quoting Philip Carey Mfx. Co. v. NLRB, 331 F.2d 720, 729 (6th Cir.), cert.

den., 379 U.S. 888 (1964). See also, e.g., Int'l Bhd. of Operative Potters v. NLRB, 320 F.2d 757, 760-61 (D.C. Cir. 1963); United Drill & Tool Corp., supra, 183 F.2d at 999-1000.

The principle that a federal statutory obligation may bear interest even though the statute makes no provision for it is rooted in Rodgers v. United States, 332 U.S. 371, 373-74 (1947). Under Rodgers, interest is awardable in such contexts depending upon the purpose of the statute, whether the statutory obligation in question is in the nature

of a debt rather than a penalty, and the interplay of the relative equities involved. 332 U.S. at 373-74. See also Philip Carey Mfg. Co., supra, 331 F.2d at 729-30; United Drill & Tool Corp., 183 F.2d at 999.

As emphasized already, the purpose of section 111 compensation is to replace miners' wages lost as a result of idling orders. Accordingly, the obligation to pay this statutory compensation is in the nature of a debt owed by the operator to the miner. Plainly, compensation under section 111 is not a penalty or fine, upon which an award of interest would be improper. See Rodgers, supra, 332 U.S. at 374-76; see also Legis. Hist., supra., at 634-35. Further, during the period of time that a miner has not been compensated, the operator has retained the use and benefit of that money. As we noted in Youngstown:

> It is recognized under our legal system that wage-earners are heavily dependent upon wages, which more often than not constitute the sole resource to purchase the necessities of life from day to day.... many wage-earners who are deprived of their wages doubtlessly find it necessary to borrow money to sustain themselves and their families, paying rates of interest ... [to do so].

1 FMSHRC at 996, quoting Philip Carey Mfg. Co., supra, 331 F.2d at 730. Thus, we perceive no inequity in requiring a mine operator, liable for section 111 compensation, to repay miners for the time value of their compensable pay. Therefore, we conclude in agreement with the judge that interest may properly be included in a compensation award. See, e.g., Youngstown, supra; Philip Carey Mfg. Co., supra; Int'l Bhd. of Operative Potters, supra; United Drill & Tool Corp., supra. 6/

6/ Courts have allowed interest on a wide variety of federal statutory obligations even though interest was not mentioned in the applicable statutes. For example, such interest has been permitted on: back pay awards under the National Labor Relations Act, 29 U.S.C. $ 151 et seq. (1982)("NLRA"): e.g., Philip Carey Mfg. Co., 331 F.2d at 729 31; Int'l Bhd. of Operative Potters, 320 F.2d at 760-61; Reserve Supply Corp. of L. I. v. NLRB, 317 F.2d 785, 789 (2d Cir. 1963); back pay awards under Title VII of the Civil Rights Act of 1964, 42 U.S.C. $ 2000 et seq. (1982): e.g., EEOC v. Wooster Brush Co. Employees Relief Ass'n, 727 F.2d 566, 578-79 (6th Cir. 1984); Pettway v. American Cast Iron Pipe Co., 494 F.2d 211, 263

(5th Cir. 1974); awards for wage violations of Fair Labor Standards Act, 29 U.S.C. $ 201 et seq. (1982): e.g., Marshall v. Hope Garcia Lancarte, 632 F.2d 1196, 1199 (5th Cir. 1980); Hodgson v. American Can Co., 440 F.2d 916, 921-22 (8th Cir. 1971); awards to employees for underpayments by contractors under Walsh Healey Act, 41 U.S.C. $ 35 et seq. (1982): e.g., Mitchell v. Riegel Textile, Inc., 259 F.2d 954, 956 (D.C. Cir. 1958); and compensation awards to returning veterans for wrongful refusals to reemploy under the Veterans Reemployment Rights Act, 38 U.S.C. $ 2021 et seq. (1982), and its statutory predecessors: e.g., Hembree v. Georgia Power Co., 637 F.2d 423, 429-30 (5th Cir. 1981); Travis v. Schwartz Mfg. Co., 216 F.2d 448, 456 (7th Cir. 1954).

We reject Clinchfield's argument that because section 105(c) of the Mine Act refers specifically to an award of interest on back pay and section 111 does not expressly provide for interest, interest is unavailable under the latter provision. In enacting the Mine Act, Congress substantially amended the antidiscrimination provisions of the Coal Act (30 U.S.C. $ 820(b) (1976)(amended 1977)) to increase the protection afforded miners and expressly permitted interest on back pay. In section 111 of the Mine Act Congress also expanded the compensation that had been available under section 110(a) of the Coal Act (see Westmoreland, 8 FMSHRC at 1324-25, 1328-29 & n.5). Although it did not mention interest in the amended compensation provisions, Congress was addressing two discrete areas of concern in making these revisions. The fact that interest was included in section 105(c) does not necessarily imply its exclusion from section 111 -- particularly in the context of a remedial health and safety statute. See, e.g., Herman & McLean v. Huddleston, 459 U.S. 375, 387 n.23 (1983): Bailey v. Federal Intermediate Credit Bk., 788 F.2d 498, 500 (8th Cir. 1986), cert. den., U.S. , 55 U.S.L.W. 3287 (U.S. Oct. 20, 1986) (No. 86-318); Carter v. OWCP, 751 F.2d 1398, 1401-02 (D.C. Cir. 1985).

It is beyond dispute that section 111 "is remedial in nature and was not intended by Congress to be interpreted and applied narrowly." Westmoreland, 8 FMSHRC at 1323. In explicitly recognizing interest on back pay awards under section 105(c), Congress was codifying legal and equitable principles that otherwise would have been implicit (under the Philip Carey line of cases referred to above). It would be perverse to conclude that codification of the right to interest in section 105(c) is a repudiation rather than an affirmation of these legal and equitable principles insofar as section 111 is concerned. See Carter, supra, 751 F.2d at 1402. Further, we find no express indication in the Mine Act's legislative history that Congress considered and intended to exclude interest on compensation or to abrogate the settled doctrine of federal law that interest may be implied under federal statutory provisions dealing with remedial or debtor-creditor relationships. See, e.g., Tri-State Terminals, Inc. v. Jesse, 596 F.2d 752, 755-56 & n.2 (7th Cir. 1979).

In this aspect of its position on review, Clinchfield seeks to interpose the maxim of statutory construction that expressio unius est exclusio alterius ("the expression of one thing is the exclusion of another"). While we agree that this doctrine often plays a useful role in determining statutory meaning, it is nevertheless only an aid to construction and not an invariable rule of law. See, e.g., 2A Sutherland Statutory Construction $$ 47.23 & .25 (Sands

4th ed. 1984 rev.); U.S. Dept. of Justice v. FLRA, 727 F.2d 481, 491 (5th Cir. 1984). All the interpretative considerations discussed above supporting our recognition of interest in section 111 fairly effectuate the Act. Most importantly, we discern in the remedial structure of section 111 a clear congressional purpose requiring full compensation to idled miners within the framework of that section -- a purpose that outweighs application of that particular rule of construction. See, e.g., 2A Sutherland, supra, $ 47.25; Carter, supra, 751 F.2d at 1401 02; Tri-State Terminals, Inc., supra, 596 F.2d at 755-56.

The essential reasons underlying our preceding conclusions regarding section 111 interest dictate that it take the form of prejudgment interest accruing from the date that the compensable pay would normally have been paid by the operator until the date that the compensation due is actually tendered. Prejudgment interest is not a penalty but is a necessary element of complete compensation for withheld funds. E.g., Platora Ltd. v. Unidentified Remains, etc., 695 F.2d 893, 906 (5th Cir.), cert. den., 464 U.S. 818 (1983). Indeed, in the absence of compelling equitable considerations to the contrary, prejudgment interest is ordinarily the form of interest awarded on monetary obligations due. E . Stroh Container Co. v. Delphi Indus., Inc., 783 F.2d 743-752 (8th Cir.), cert. den., 476 U.S. 1142 (1986). As the Supreme Court has explained:

> Prejudgment interest is an element of complete compensation....
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> [I]t serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment as entered, thereby achieving full compensation for the injury those damages are intended to redress.

West Virginia v. United States, supra, 479 U.S. at 310-11 & n. 2. The cases cited above in n.6 concerning the implication of interest in federal statutes all contemplated generally, or authorized specifically, the award of prejudgment interest. See, e.g., American Can Co., 440 F.2d at 922; Int,l Bhd. of Operative Potters, 320 F.2d at 760-61; United Drill & Tool Corp., 183 F.2d at 999-1000. 7/

Here, from the time of the issuance of the imminent danger withdrawal order, Clinchfield has had the use of the compensable pay at issue. See, e.g., Stroh Container Co., supra, 783 F.2d at 752; American Can Co., 440 F.2d at 922. To make the miners whole for the time value of their compensable pay, therefore, we hold in affirmance of the judge that interest is appropriate on sums of compensation due from the date that the compensable pay would have been paid but for the idlement until the date that the compensation due is tendered. This result comports with the interest approach followed in discrimination cases under Arkansas-Carbona. 5 FMSHRC at 2051-53 & n.15.

We disagree with Clinchfield's argument that this outcome is harsh or punitive. Prejudgment interest is an accepted component of just and complete compensation. Clinchfield has not demonstrated any special equitable considerations that might justify an exception in this

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7/ We note that 28 U.S.C. $ 1961 (1982), authorizing postjudgment interest on monetary judgments in federal civil cases, does not purport to address the subject of prejudgment interest and does not bar its award in appropriate cases. E.g., Bricklayers' Pension Trust Fund v. Taiariol, 671 F.2d 988, 989 (6th Cir. 1982).

proceeding. While, as Clinchfield points out, this litigation has followed a protracted course, Clinchfield nevertheless has retained the benefit of the money involved throughout that period. Finally, although we do not question Clinchfield's good faith, its good faith does not preclude assessment of prejudgment interest. E.g., Stroh Container Co., supra; American Can Co., supra.

2. Rate and computation of interest

If interest is to be awarded, both parties urge us to cease applying the interest rate formula set forth in Arkansas-Carbona, supra. We conclude that there should be one interest rate method of computation applicable to both discrimination and compensation cases, and we agree that it is appropriate to modify the interest formula of Arkansas-Carbona.

In Arkansas-Carbona, we approved simple interest on back pay awards under section 105(c) of the Act to provide miners a "full measure of relief" from illegal discrimination or retaliation. 5 FMSHRC at 2049, 2052. In choosing an appropriate rate of interest, we considered "the potential cost to the miner both as a 'creditor' of the operator, and as a potential borrower from a lending institution under real economic conditions." 5 FMSHRC at 2050. In addition, we endeavored to select an interest rate "flexible enough to reflect economic and market realities, but not so complex in application as to place an undue burden on the parties and on judges...." Id. In light of these criteria, we adopted in that case the "adjusted prime rate" announced semi-annually by the Internal Revenue Service ("IRS") under the then applicable version of 26 U.S.C. $ 6621 for purposes of fixing interest on overpayment and underpayment of taxes. Arkansas-Carbona, 5 FMSHRC at 2050-51. 8/ In so doing, we followed the practice of the NLRB, which applied the adjusted prime rate as the interest rate on back pay awards under the NLRA. See Olympia Medical Corp., 250 NLRB 146, 147 (1980); Florida Steel Corp., 231 NLRB 651 (1977). At the same time, we adopted the "quarterly method" of calculating the amount of back pay and interest due. 5 FMSHRC at 2051-54.

The Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085 (1986), however, changed the method by which the IRS computes interest on overpayment and underpayment of taxes, as of January 1, 1987. Use of the adjusted prime rate as determined by the Federal Reserve Board was abandoned, and the IRS now uses the "short-term Federal rate." 26 U.S.C.A. $ 6621 (Supp. 1988). This rate is determined by the Secretary of Treasury based on the average market yield on outstanding marketable obligations of the United States with remaining periods to

maturity of three years or less. 26 U.S.C.A. $ 1274(d)(1)(C)(i) (Supp. 1988). The short-term Federal rate is determined for the first month in each calendar quarter and applies during the first calendar quarter beginning

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8/ The adjusted prime rate is a percentage of the average predominant rates quoted by commercial banks to large businesses as determined by the Federal Reserve Board and rounded to the nearest full percent.

after such month. 26 U.S.C.A. $ 6621(b) (Supp. 1988). 9/ These rates are rounded to the nearest full percent. 26 U.S.C.A. $ 6621(b)(3) (Supp. 1988). The overpayment interest rate (paid by the IRS on tax refunds) is the short-term Federal rate plus 2 percentage points and the underpayment rate (paid by the taxpayer on additional taxes) is the short-term Federal rate plus 3 percentage points. 26 U.S.C.A. $ 6621(a) (Supp. 1988).

In response to this legislation, the NLRB in May 1987 abandoned its use of the adjusted prime rate and chose the underpayment rate of short-term Federal interest as its interest rate for back pay awards. New Horizons, supra, 283 NLRB No. 181, 125 LRRM 1177. The NLRB concluded that the short-term Federal rate corresponds to private economic market forces, is subject to periodic adjustment, is relatively easy to administer, and, because the rate is determined on a quarterly basis, mirrors the quarterly method of back pay calculation. 125 LRRM at 1178.

We agree and select the short-term Federal rate applicable to underpayment of taxes as the interest rate for compensation awards. The short-term Federal rate, based on average market yields of marketable federal obligations, is influenced by private economic market forces, and captures the "economic and market realities" that a remedial interest rate should embody. Arkansas-Carbona, 5 FMSHRC at 2050. It is periodically adjusted and responds to changing economic conditions. Since the rate is publicly announced well in advance of the effective date, it also offers reasonable notice to parties and our judges and would be relatively easy to administer. Finally, the underpayment rate is reflective of the cost to miners of borrowing money when deprived of a paycheck and, therefore, tends to compensate them more fully for their potential losses as borrowers. See Arkansas-Carbona, supra; Youngstown Mines, 1 FMSHRC at 996.

We note that these same considerations apply with equal force to the award of back pay under section 105(c) of the Act, the context in which Arkansas-Carbona was decided. For that reason, and to enhance the efficiency of the administration of the remedial aspects of the Act, we adopt, for all cases in which decisions are issued after the date of this opinion, the short-term Federal underpayment rate as the interest rate on both compensation and discrimination awards. Because there would have been no major differences between the adjusted prime rate approved in Arkansas-Carbona and the short-term Federal underpayment rate since January 1987, we exercise our discretion to apply the short-term rate retroactively to January 1987. Cf. New Horizons, 125 LRRM at 1178.

The applicable interest rates with their corresponding daily rates for back pay and compensation awards from January 1, 1978, through December 31, 1988, are as follows:

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9/ For example, the rate determined in April of a given year applies to the months of July, August and September of that year.

January 1, 1978 to December 31, 1979....6% (.0001666 per day)
January 1, 1980 to December 31, 1981...12% (.0003333 per day)
January 1, 1982 to December 31, 1982...20% (.0005555 per day)
January 1, 1983 to June 30, 1983.....16% (.0004444 per day)
July 1, 1983 to December 31, 1984.....11% (.0003055 per day)
January 1, 1985 to June 30, 1985.....13% (.0003611 per day)
July 1, 1985 to December 31, 1985.....11% (.0003055 per day)
January 1, 1986 to June 30, 1986.....10% (.0002777 per day)
July 1, 1986 to September 30, 1987.....9% (.0002500 per day)
October 1, 1987 to December 31, 1987...10% (.0002777 per day)
January 1, 1988 to March 31, 1988.....11% (.0003055 per day)
April 1, 1988 to September 30, 1988....10% (.0002777 per day)
October 1, 1988 to December 31, 1988...11% (.0003055 per day)10/

As to the computation of interest awards, the Arkansas-Carbona quarterly method has stood the test of time since its announcement in 1983. 5 FMSHRC at 2051-54. Therefore, we retain the quarterly method of remedial award computation based on use of the four calendar quarters and substitute the short-term Federal underpayment rates for the adjusted prime rates.from January 1, 1987, forward. For purposes of calculating such awards in the compensation sphere, the explanation and computational example provided in Arkansas-Carbona (5 FMSHRC at 2051-54) supply the needed guidance and are incorporated herein by reference. 11/

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10/ It is necessary to convert the interest rates announced by the IRS to daily rates ("daily interest factors") in order to calculate interest on periods of less than one year. See Arkansas-Carbona, 5 FMSHRC at 2051, 2052-53.

11/ A Federal Register notice summarizing this interest calculation holding will be published. In the future the Commission's Executive Director will timely forward to the Commission's Chief Administrative Law Judge, for dissemination to our judges, appropriate updated lists of the applicable interest rates and the daily interest factors. The public may also obtain the lists of relevant interest rates by submitting written requests addressed to the Commission's Executive Director, 1730 K St., N.W., Washington, D.C. 20006.

III.

Conclusion

For the foregoing reasons, we affirm the judge's award of compensation, his disallowance of attorney's fees and costs, and his award of prejudgment interest on the compensation due. As announced herein, however, we modify the Arkansas Carbona interest computation formula by adopting the short-term Federal underpayment rate as the interest rate applicable to both compensation and back pay awards, effective as of January 1, 1987. Accordingly, Clinchfield is directed to pay the complainants the stipulated sums of compensation due bearing interest from the stipulated date (9 FMSHRC at 1278-84), as provided for in this decision. 12/

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

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