CCASE:
UMWA V. CONSOLIDATION COAL
DDATE:
19890920
TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
September 20, 1989

LOCAL UNION 1261, DISTRICT 22
UNITED MINE WORKERS OF
AMERICA (UMWA) Docket No. WEST 86-199-C

v.

CONSOLIDATION COAL COMPANY

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

DECISION

BY: Ford Chairman; Doyle and Nelson, Commissioners

In this proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1982)("Mine Act" or "Act"), the primary issue is whether miners normally scheduled to work on a particular day are entitled to compensation under the first and second sentences of section 111 of the Mine Act, when the operator has voluntarily closed the mine two shifts earlier for safety reasons. 1/

_____

1/ Section 111 states in part:

Entitlement of miners to full compensation

[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] of this [Act], 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 rate 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

The United Mine Workers of America ("UMWA") seeks compensation from Consolidation Coal Co. ("Consol") for 62 miners that the UMWA alleges were idled by a withdrawal order issued pursuant to section 103(k) of the Act. 2/ Commission Administrative Law Judge John Morris held that the miners were entitled to compensation and granted the UMWA's complaint. 9 FMSHRC 1799 (October 1987)(ALJ). The judge reasoned that, although the miners were voluntarily withdrawn by Consol prior to issuance of the section 103(k) control order, the order officially closed the mine and idled the miners for compensation purposes. 9 FMSHRC at 1802. For the reasons explained below, we conclude that the claimants are not entitled to compensation under the first and second sentences of section 111 since none of the claimants were "working

---

> 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 [Act] 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. [4] Whenever an operator violates or fails or refuses to comply with any order issued under section [103] ..., section [104[..., or section [107] of this [Act], all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated....

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

2/ Section 103(k), which grants the Secretary flexible authority to issue such orders as are necessary to insure the safety of any person in a mine in the event of an accident, states in part:

> In the event of any accident occurring in a coal

> or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine....

30 U.S.C. 813(k). An order issued pursuant to section 103(k) is commonly referred to as a "control order."

during the shift when [the] order was issued" or were on "the next working shift". Therefore, we reverse the judge's decision.

I.

The facts were stipulated by the parties. Briefly, Consol's Emery Mine operates three eight hour shifts per day: the daylight shift, the afternoon shift, and the graveyard shift. On April 16, 1986, during the afternoon shift, Consol voluntarily removed its afternoon shift employees from the mine because of rising gas levels. Consol informed the miners that the mine would be closed until further notice because of the gas levels. Immediately thereafter, Consol notified the UMWA and officials of the Secretary of Labor's Mine Safety and Health Administration ("MSHA") of its action. Consol also called miners scheduled to work the graveyard and daylight shifts and advised them that the mine would be closed until further notice. Consol paid the afternoon shift miners for the 4-1/2 hours that they had worked on April 16 before being withdrawn. Consol did not pay any of the miners scheduled to work on April 17 who had been notified not to report.

On the morning of April 17, MSHA personnel arrived at the mine to investigate the conditions that had caused Consol to remove its miners. Based on the analysis of the air samples taken by Consol, an MSHA inspector issued a section 103(k) control order at 7:14 a.m. The order, which did not allege that Consol had violated any mandatory safety standards, stated in part:

> Based on the results of air samples taken by the Company...this mine has experienced a possible fire, therefore, all persons has [sic] been removed from the mine by Company order to insure their safety and no person shall enter inby the mine portal without modification of this order, after consultation with appropriate persons selected from Company officials, State officials, the miners representative and other persons.

After the withdrawal order was issued, no miners could enter the mine nor could mining activities resume until MSHA modified or terminated the order. On April 20, 1986, MSHA modified the order to allow mining to resume, and on May 16, 1986, MSHA terminated the order. 9 FMSHRC at 1800-01.

Because Consol did not pay any miners for April 17, the UMWA filed its compensation complaint. The complaint, as amended, requested

eight hours of pay, pursuant to the first sentence of section 111 of the Act, for each of 36 miners scheduled to work the day shift on April 17 and four hours of pay, pursuant to the second sentence of section 111, for each of 26 miners scheduled to work the afternoon shift on April 17.

Before the judge, Consol argued that the UMWA's complaint should fail because it did not meet the requirements of section 111. Consol noted that section 111 specifically provides that, if a section 103(k) withdrawal order has been issued, those entitled to compensation are

"... all miners working during the shift when such order was issued who are idled by such order ..." and, in the event the order is not terminated prior to "... the next working shift, all miners on that shift who are idled by such order ...." The judge rejected Consol's argument and focused instead upon his conclusion that the complainants were "officially idled" by the withdrawal order. The judge stated that he was persuaded by decisions of our predecessor, the Interior Board of Mine Operations Appeals ("Board"), and two Commission judges holding in sum "that an MSHA withdrawal order is more extensive in scope than a voluntary withdrawal by the operator" and "regardless of the sequence of events or the method by which the miners were originally withdrawn" the withdrawal order may be the basis for compensation. 9 FMSHRC at 1802. 3/ Therefore, the judge awarded compensation to the complainants.

Both Consol and the UMWA filed petitions for discretionary review, both of which the Commission granted. Consol seeks review of the judge's conclusion that the complainants are entitled to compensation. The UMWA seeks review of the judge's failure to assess prejudgment interest on the compensation he awarded.

II.

The question of the claimants' entitlement to compensation centers around the meaning of the phrases "working during the shift when such order was issued" in the first sentence of section 111 of the Act and the phrase "the next working shift" in the second sentence. The importance of the phrases as prerequisites to section 111 first and second sentence compensation is apparent when they are viewed in the context of the Mine Act's overall scheme of compensation. Section 111 is remedial in nature and was intended by Congress to reduce the economic impact on miners idled by withdrawal orders. 4/ Miners idled as the result of specified withdrawal orders are entitled to compensation that varies in amount according to the type of withdrawal order issued and the conduct of the operator giving rise to the order. The first and second sentences of section 111 provide that, when an order is issued under sections 103, 104, or 107, miners working during that shift are entitled to full compensation for the balance of the shift during

---

3/ The judge cited UMWA, Dist. 31 v. Clinchfield Coal Co., 1 IBMA 33 (1971); UMWA, Loc. 1993 v. Consolidation Coal Co., 1 MSHC 1668 (1978) (ALJ Broderick); and UMWA, Loc. 2244 v. Consolidation Coal Co., 1 MHSC 1674 (1978)(ALJ Fauver) in which complainants were awarded compensation despite the fact that they were voluntarily withdrawn by the operator prior to the issuance of the withdrawal order upon which compensation was based.

4/ The word "idled" generally has been recognized in the statutory compensation context to include both a physical removal from the proscribed mine or area, and a prohibition from entering the proscribed mine or area. See UMWA, Dist. No. 31 v. Clinchfield Coal Co., 1 IBMA 33, 41 (1971); Roscoe Page v. Valley Camp Coal Co., 6 IBMA 1, 6-7 (1976); Loc. Un. 1670, Dist. 12, UMWA v. Peabody Coal Co., 1 FMSHRC 1785, 1790 (November 1979).

which the order is issued and, where an order has not been terminated prior to the next working shift, miners on that shift are entitled to up to four hours compensation. First and second sentence compensation is commonly referred to as "shift compensation" and entitlement to shift compensation exists even where there is no culpability on the part of the operator for the conditions leading to the issuance of the order. The third sentence of section 111 provides that, if an order is issued under sections 104 or 107 "for the failure of the operator to comply with any mandatory standard," miners are entitled to compensation for the actual time that they are idled for up to one week. Finally, the fourth sentence of section 111 provides that, if an operator fails to comply with a withdrawal order issued under sections 103, 104, or 107, miners who otherwise would have been withdrawn are entitled to full compensation at their regular rates of pay, in addition to pay received for work performed after issuance of the order, until such time as the order is complied with, vacated, or terminated. This graduated scheme of increasing compensation commensurate with increasingly serious operator conduct reflects the limited nature of compensation and represents a careful and deliberate balancing by Congress of the competing interests of miners and mine operators. See Rushton Mining Co. v. Morton, 520 F.2d 716, 721"722 (3rd Cir. 1975).

The facts of this case are not in dispute. We are called upon to decide whether, based on those facts, the claimants are entitled to shift compensation under the first two sentences of section 111. It is a fundamental rule of statutory construction that "the primary dispositive source of information is the wording of the statute itself." Association of Bituminous Contractors v. Andrus, 581 F.2d 853, 861 (D.C. Cir. 1978). If the meaning of that language is plain, the statute is to be enforced according to its terms unless it can be established that Congress clearly intended the words to have a different meaning. See, e.g., Caminetti v. United States, 242 U.S. 470, 485 (1916); Chevron, U.S.A. v. Natural Resources Defense Counsel, Inc., 467 U.S. 837, 842-43 (1984); Matala v. Consolidation Coal Co., 647 F.2d 427, 429-30 (4th Cir. 1981). See, also Western Fuels-Utah, Inc., 11 FMSHRC 278 (March 1989), appeal docketed, No. 89-1258 (D.C. Cir. April 20, 1989).

The meaning of the first two sentences of section 111 is clear. If a specified withdrawal order has been issued, "all miners working during the shift when such order was issued who are idled by such order" are entitled to compensation for the remainder of their shift. (Emphasis added). If the order is not terminated prior to "the next working shift, all miners on that shift who are idled by such order" are entitled to compensation for up to four hours. (Emphasis added.) The language is in nowise qualified. Thus, to be entitled to shift compensation, a miner must either be working

during the shift when the specified order was issued and have been idled by the order or, if the order is not terminated prior to the next working shift, must be on the next working shift.

Here, the preconditions for entitlement to shift compensation were not met. At the time the order was issued, no miners were working nor had they been since the previous evening at which time Consol had voluntarily withdrawn all miners in order to guarantee their safety.

Therefore, none of those for whom compensation is claimed were "working during the shift when...[the] order was issued." Further, Consol advised miners on the other two shifts that "the mine is idle until further notice." 9 FMSHRC at 1800. Therefore, none of those for whom compensation is claimed were on "the next working shift." (Emphasis added.) 5/ We therefore hold that the claimants, not having met these plainly stated prerequisites, were not eligible to be compensated.

Apart from the plain wording of the statute, there are also practical considerations. A statute should not be construed in a way that is foreign to common sense or its legislative purpose. Sutherland Statutory Construction 45.09, 45.12 (4th ed. 1985). As discussed, the Mine Act involves a balancing of the interests of mine operators and miners, with safety being the preeminent concern. Section 2 of the Mine Act specifies at the outset that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource--the miner," and section 2(e) adds that "the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of [unsafe and unhealthful] conditions and practices in such mines." The Mine Act was not intended to remove from an operator the right to withdraw miners from a mine for safety reasons. While MSHA has the authority to order such withdrawal, it does not have that power exclusively.

Here, the record shows immediate action on the part of a mine operator to remove all afternoon shift employees from the mine because of rising gas levels--clearly a threat to the health and safety of the miners. The wisdom of this action was attested by the action of MSHA inspectors who, after being summoned by the operator, issued a control order on the following morning, officially closing the mine and thereby confirming the evacuation order issued during the previous evening by the mine operator. Thus, apart from the fact that no miners were present in the mine when the MSHA closure order was issued, it is apparent that the safety first edict of section 2 was observed conscientiously by the mine operator here and that it would be a departure from the clear intent and purpose of the Mine Act to penalize the operator for voluntarily idling miners for their own protection. To impose such liability could conceivably encourage less conscientious operators in similar circumstances to continue production, at risk to the miners, until the MSHA inspectors arrived to issue a control order idling the miners. We do not believe that the Mine Act was intended to stifle such safety conscious actions by operators, as Consol took here. 6/

5/ It should be noted that the compensation claimed by the UMWA is not for the remainder of the afternoon shift of April 16 (those actually withdrawn

and sent home by Consol) and those on the next shift due at the mine (the graveyard shift) but rather for the day shift of April 17 (during which time the inspector arrived and issued the order) and for the first four hours of the afternoon shift on that day.

6/ We also note that this case does not involve an attempt to avoid section 111 liability by withdrawing miners in anticipation of

The purpose and scope of shift compensation can also be determined by another important concern expressed by Congress in adopting section 111 in its specific terms: insulating the mine inspector from any repercussions that might arise from his withdrawing miners and temporarily depriving them of their livelihood. A key passage from the Report of the Senate Committee setting forth the rationale for the miners' compensation provision concludes by stating, "[t]his provision will also remove any possible inhibition of the inspector in the issuance of closure orders." Leg. Hist. at 635. This convinces us that Congress intended shift compensation rights to arise only when the physical removal of miners is effectuated by the inspector himself so that the inspector in carrying out his enforcement duties is not inhibited or distracted by workplace considerations wholly extraneous to the protection of miners. Here, however, the operator unilaterally and voluntarily withdrew its own miners and notified all shifts that the mine would be closed until further notice. Obviously, under such circumstances, no inhibitions would have attached to the inspector's enforcement actions taken twelve hours later when the mine was empty. The need to insulate the inspector from any purported miner animus had by then evaporated.

III.

The Commission has previously focused on the meaning of the term "idled" and has adopted the Board's interpretation (see n.4 supra) for Mine Act compensation purposes. It has held that a miner who has been previously withdrawn from a mine can still be "idled" by a subsequently issued withdrawal order in the sense that the miner is barred by the order from returning to work and that miners so idled may be entitled to compensation.

We do not disavow the Commission's earlier interpretation of "idled" and simply hold today that to be entitled to first and second sentence compensation, miners, in addition to being idled by an order of withdrawal, must also be working during the shift when the subject order was issued or, if the order is not terminated prior to the next working shift, be on that shift. Thus, in view of our disposition of this case by resort to the plain meaning of the first two sentences of section 111, the claimants' and the judge's reliance upon UMWA, Dist. 31 v. Clinchfield Coal Co., 1 IBMA 33 (1971) and two unreviewed administrative law judge decisions (fn. 3, supra) is misplaced. The decisional rationale in those cases centered on the fact that the withdrawal orders at issue "officially idled" the miners but did not take into consideration the meaning and effect of the phrases "working during the shift when such order was issued" and "on [the next working] shift," indeed, in Clinchfield, first and second sentence shift compensation was not even at issue. (The miners had already been paid

shift compensation by the operator. 1 IBMA at 36). Rather, the miners were actually seeking the equivalent of third sentence compensation (up to one week's

---

withdrawal action by MSHA. Compare UMWA, Loc. 1993 v. Consolidation Coal Co., 1 MSHC 1668 (October 1979)(ALJ). On the contrary, immediately after taking the prudent action of withdrawing the miners, Consol notified MSHA of the conditions it was experiencing at the mine.

pay) by attempting to establish that the subject withdrawal order was based upon a violation caused by the operator's unwarrantable failure to comply with the standards. 7/ As discussed above, third sentence compensation does not involve "working" or "working shift" prerequisites. Likewise, the Commission's decisions in Loc. U. 1889, Dist. 17 v. Westmoreland Coal Co., 8 FMSHRC 1317, 1327 (September 1986); Loc. U. 2274, Dist. 17, UMWA v. Clinchfield Coal Co., 8 FMSHRC 1310, 1313 (September 1986); Loc. U. 1609, Dist. 2, UMWA v. Greenwich Collieries, 8 FMSHRC 1302, 1306-07 (September 1986) are all markedly distinguishable because they involved claims for compensation under the third sentence of section 111.

For similar reasons, we find little guidance in the Commission's decision in Peabody Coal Co., 1 FMSHRC 1785 (November 1979), a case arising under the 1969 Coal Act. In that case, the Commission concluded that shift compensation was properly awarded where, as the result of being withdrawn due to a previously issued non-compensable order, no miners were working when the compensable withdrawal order was issued. The Commission "disagreed" with Peabody's contention that since no miners were actually working when the second order was issued no compensation was due because it found that the miners were idled within the meaning of the compensation provision at the time the order was issued. 1 FMSHRC at 1790. Factually, the Peabody case was very different. Miners were, in fact, working at the time the initial non-compensable withdrawal order was issued. The MSHA inspector was present when the hazardous condition was detected and he initiated the withdrawal action. Further, the Commission, like the Board, did not address the language "working during the shift" nor did it set forth its reasons for not giving that statutory phrase its plain meaning. The Commission appears to have based its decision solely upon the fact that the miners were idled by issuance of the second order.

In contrast, our decision addresses the existence of the phases "working during the shift when such order was issued" and "the next working shift" and ascribes them their intended place in the Act's compensation scheme. 8/ Recognition of the phrases as prerequisites for shift compensation eliminates the roulette wheel effect that results from basing shift compensation solely upon idlement, wherein shift compensation is awarded to those not actually working and is based upon the chance timing of the inspection and the order's issuance rather than upon the claimants' actual deprivation of work. Our decision, interpreting section 111 as written by Congress, corrects this capricious result. To hold otherwise in the face of the words of the first two sentences of section 111 would be to usurp the legislative

---

7/ On the ground that evidence of an operator's unwarrantable failure to comply was inadmissible in a compensation proceeding, the case was

ultimately dismissed. ALJ Decision on Remand, Docket No. HOPE 70-120 (June 4, 1971).

8/ This case does not require us to define all contours of the meaning of "working during the shift," and we leave such questions for future cases in which they are actually presented.

function.

Accordingly, the decision of the judge is reversed. 9/

9/ In view of our reversal of the judge's decision, we need not reach the issue raised by the UMWA of whether the judge erred in failing to award the complainants prejudgment interest. We note, however, that subsequent to the judge's decision the Commission held that interest may properly be included in a compensation award and that it should include interest accruing from the date that the compensable pay would normally have been paid until the date that the compensation is actually tendered. Loc. U. 2274, Dist. 28, UMWA v. Clinchfield Coal Co., 10 FMSHRC 1493, 1500-03 (November 1988).

Commissioners Backley and Lastowka, dissenting:

In its decision, the majority denies compensation under section 111 of the Mine Act to miners idled by a withdrawal order issued pursuant to section 103(k) of the Act on the basis that the mine operator, Consol, had itself withdrawn the miners from the mine prior to the MSHA inspector's issuance of the withdrawal order. Because we believe that Consol's withdrawal of the miners does not negate the effect of the withdrawal order issued pursuant to section 103(k), we would affirm the administrative law judge's decision awarding compensation. Accordingly, we dissent.

The facts in this case were stipulated by the parties. On April 16, 1986, Consol discovered that the level of explosive gas was rising behind the North seals at its Emery Mine. Out of concern for safety, Consol withdrew its miners from the Emery Mine at 7:00 p.m. and notified them that the mine was "idled until further notice because of the rising gas levels." 9 FMSHRC at 1801. Consol also notified miners scheduled to work the next two shifts that "the mine is idle until further notice." Id. Consol further notified MSHA and the UMWA that it had removed the miners from the mine. It is not disputed that Consol's decision to withdraw the miners in the face of the hazard was commendable mining practice intended to eliminate the potential of death or serious injury in the event the gas ignited.

After conducting an investigation, the MSHA inspector issued a withdrawal order under section 103(k) closing the mine based on the samples taken by Consol of the air behind the seals. 1/ The withdrawal order, issued at 7:14 a.m. on April 17, stated that the "mine has experienced a possible fire," and referenced the fact that the miners had been removed from the mine by Consol to insure their safety. 9 FMSHRC at 1801. The withdrawal order further prohibited any person from entering the mine until the order was modified by MSHA. Id. Thus, the effect of the order was to deny the miners entry into the mine until such time as MSHA believed that the danger had been eliminated.

There is no doubt therefore that the miners were prevented from working because of hazardous gas levels and that the withdrawal order was issued by the MSHA inspector to keep miners away from this danger. The majority nevertheless denies compensation because the mine operator had removed the miners from the hazard before the MSHA inspector arrived to issue the withdrawal order officially closing the mine. Our colleagues base their conclusion on the fact that, due to Consol's previous withdrawal of its miners, there were no miners "working during

---

1/ Section 103(k), 30 U.S.C. 813(k), provides:

In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine....

the shift" at the time the withdrawal order was issued, and there was no "next working shift" after the order was issued because Consol had already advised the miners to stay home until further notice. This reasoning, however, is contrary to well-established precedent correctly relied upon by the judge in awarding compensation.

It has long been recognized that a withdrawal order issued by a federal mine inspector: (1) officially closes a mine for compensation purposes notwithstanding a voluntary withdrawal of miners by the operator; (2) prohibits miners from reentering the mine until such time as an MSHA inspector determines that the mine is safe; and (3) officially idles the miners for the purposes of the compensation provision of the Mine Act. As early as 1971, the Department of Interior's Board of Mine Operations Appeals ("Board") held that an order of withdrawal issued by a federal inspector not only removes miners from a mine, but also empowers the Secretary to prohibit reentry until the hazardous conditions have been eliminated. UMWA, Dist. 31 v. Clinchfield Coal Co., 1 IBMA 33 (1971). In Clinchfield, an explosion had occurred and the operator had immediately withdrawn all personnel from the mine. Not until the following shift did a federal inspector arrive to issue a withdrawal order. 1 IBMA at 35. In rejecting the operator's argument that the miners had not been "idled" by the inspector's order in light of their previous withdrawal from the mine by the operator, the Board explained:

> ...an Order of Withdrawal is more extensive than the mere withdrawal of miners--it also confers jurisdiction...to prohibit reentry until an authorized representative of the Secretary determines that '... imminent danger no longer exists' ...or '... that the violation has been abated'.... Thus the purpose of a withdrawal order is not only to remove the miners but also to insure that they remain withdrawn until the conditions or dangers have been eliminated. Regardless of the sequence of events, or the method by which the miners were originally withdrawn, a mine ... is officially closed upon the issuance of [a withdrawal order], and the miners are officially idled by such order.

1 IBMA at 41 (emphasis added)(citations omitted). Accord, Roscoe Page v. Valley Camp Coal Co., 6 IBMA 1 (1976).

This Commission has also previously considered the specific issue raised in this case and adopted the rationale of the Clinchfield decision. In Loc. Un. 1670, Dist. 12, UMWA v. Peabody Coal Company, 1 FMSHRC 1785

(November 1979), a mine fire was discovered by the operator and a federal inspector, who was in the mine at the time, issued a withdrawal order pursuant to section 103 of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq. (1976)(amended 1977). Section 110 of the Coal Act did not provide for the compensation of miners withdrawn pursuant to section 103 of that Act, but it did provide compensation to miners "working during the shift" or "the next working

shift" when an imminent danger withdrawal order was issued. After conducting an investigation, the inspector issued such an imminent danger order. Because of their previous withdrawal pursuant to the section 103 withdrawal order, no miners were working "during the shift" when the imminent danger withdrawal order was issued or on "the next working shift." The miners who had been scheduled to work those shifts filed for compensation under section 110 of the Coal Act.

The Commission expressly rejected the operator's argument that the shift compensation provisions of section 110 of the Coal Act limited an award of compensation to miners who are actually "'working during the shift' when a withdrawal order is issued." 1 FMSHRC at 1790. The Commission held that the operator was required to pay compensation under the first two sentences of section 110 of the Coal Act to the "miners normally scheduled to work" during the shift that was idled by the withdrawal order despite the fact that these miners had been previously withdrawn and were not working during the shift when such order was issued. 1 FMSHRC 1790. The Commission further held that compensation was also due the miners normally scheduled to work the "next working shift" even though "the miners were notified several days beforehand not to report for work." 1 FMSHRC at 1791. Thus, the issue raised by Consol in the present case was, in fact, squarely addressed by the Commission in Peabody and the construction of section 111 now adopted by the majority was expressly rejected. Despite their insistence that Peabody offers "little guidance" in this case (slip op. at 7), the holding is squarely applicable and the majority here effectively overrules Peabody.

In Loc. Un. 1889, Dist. 17, UMWA v. Westmoreland Coal Co., 8 FMSHRC 1317, 1323 (September 1986), the Commission noted that "section 111 is remedial in nature and was not intended by Congress to be interpreted and applied narrowly." The majority here ignores this admonition and instead narrowly interprets the phrases "working during the shift" and "next working shift." Miners who are scheduled to work a particular shift, but who are prevented from working as a result of a withdrawal order, are no less idled than miners who are working in a mine at the time a withdrawal order is issued. In both instances miners are prevented from working by a withdrawal order issued by a federal inspector as a result of hazardous conditions existing in the mine. In both these circumstances, the provisions of section 111 awarding limited compensation to idled miners were intended to be triggered. Accord, Loc. Un. 2274, Dist. 28, UMWA v. Clinchfield Coal, 10 FMSHRC 1493 (November 1988), appeal docketed, No. 88-1873 (D.C. Cir., December 16, 1988); Loc. Un. 1609, Dist. 2, UMWA v. Greenwich Collieries, 8 FMSHRC 1302 (November 1988).

With respect to the issue of prejudgment interest on the award of

compensation, the Commission has held that prejudgment interest may properly be awarded in compensation cases and we would remand to the judge for consideration of this issue. Loc. Un. 2274 v. Clinchfield, supra, 10 FMSHRC at 1500-03.

In sum, we conclude that the prerequisites for shift compensation were met in this case because the miners were prevented from working their shift as a result of the closure of the mine by an order of withdrawal issued under section 103 of the Mine Act. We would affirm the administrative law judge's award of compensation and remand for determination of the interest due.

Distribution

Robert M. Vukas, Esq.
Consolidation Coal Company
1800 Washington Road
Pittsburgh, PA 15241

Mary Lu Jordan, Esq.
Michael Dinnerstein, Esq.
Maureen Geraghty, Esq.
United Mine Workers of America
900 15th St., N.W.
Washington, D.C. 20005

Administrative Law Judge John Morris
Federal Mine Safety & Health Review Commission
280 Colonnade Center
1244 Speer Blvd.
Denver, Colorado 80204