

CCASE:  
MSHA V. FRANCE STONE  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
May 21, 1990

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

v. Docket No. LAKE 89-92-M

FRANCE STONE COMPANY

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

DIRECTION FOR REVIEW AND ORDER

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq (1982) ("Mine Act"). On April 18, 1990, Commission Administrative Law Judge James Broderick issued a decision approving a settlement agreement filed by the Secretary of Labor. In the motion the Secretary stated that the terms of the settlement had been agreed to by France Stone Company ("France Stone"). In accordance with this motion, the judge assessed civil penalties of \$12,000, the amount originally proposed by the Secretary for the two citations involved in this proceeding. On April 20, 1990, however, France Stone filed with Judge Broderick a motion to amend the settlement, to approve the amended settlement, and to dismiss the proceeding. This motion asserted that the Secretary concurred in the motion. We deem France Stone's motion to constitute a timely petition for discretionary review, which we grant, and we remand this matter to the judge for further proceedings.

The judge's jurisdiction in this proceeding terminated when his decision approving settlement was issued. 29 C.F.R. 2700.65(c). Under the Mine Act and the Commission's procedural rules, once a judge's

decision has issued, relief from the decision may be sought by filing with the Commission a petition for discretionary review within 30 days of the decision. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). Here, France Stone's motion to Judge Broderick constitutes a request for relief from the judge's decision, and constitutes a timely filed petition for discretionary review. See, e.g., *Kathleen I. Tarmann v. Int'l Salt Company*, 12 FMSHRC 1, 2 (January 1990).

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France Stone was not a signatory to the "settlement agreement that it now disputes in part. France Stone's present motion suggests that the original settlement submitted to the judge may not have reflected the parties' agreement. Although France Stone's motion to amend the settlement represents that the Secretary concurs in the motion, like the first submission it is not signed by the opposing party. In this circumstance, further proceedings before the judge are necessary in order to determine the terms of the parties' settlement. Peabody Coal Co., 8 FMSHRC 1265, 1266 (September 1986).

Accordingly, the judge's Decision Approving Settlement is vacated and the matter is remanded to the judge for further appropriate proceedings.

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