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MSHA V. WESTERN FUELS-UTAH

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

August 22, 1990
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

Docket Nos. WEST 86-113-R
WEST 86-114-R
WEST 86-245-(A)

WESTERN FUELS-UTAH, INC.

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

ORDER

BY THE COMMISSION:

This consolidated contest and civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. •801 et seq. (1988)("Mine Act" or "Act"), is before us on remand from an opinion of the United States Court of Appeals for the District of Columbia Circuit reversing our prior decision in this matter. Secretary of Labor v. Western Fuels-Utah, Inc., & FMSHRC, 900 F.2d 318 (1990), rev'd, 11 FMSHRC 278 (March 1989). At issue is whether supervisors who meet the training certification requirements for supervisory personnel under a state program approved by the Department of Labor's Mine Safety and Health Administration ("MSHA") must be given task training prior to performing work for which non-supervisory miners would be required to have task training.

MSHA cited Western Fuels-Utah, Inc. ("Western Fuels") for a violation of section 115(a) of the Mine Act, 30 U.S.C. •825(a), and 30 C.F.R. •48.7 for failing to task train one of its section foremen in the operation of a roof-bolting machine prior to his using that machine. Section 115(a)(4) of the Act and section 48.7 of the Secretary of Labor's implementing regulations require task training for "miners"; as relevant, 30 C.F.R.

□48.2(a)(1)(ii) excludes from the definition of "miners" subject to such task training "[s]upervisory personnel subject to MSHA approved State certification requirements." In proceedings before Commission Administrative Law Judge Roy J. Maurer, Western Fuels argued that the foreman in question was exempt from the task training requirements pursuant to the plain language of the exclusion in section 48.2(a)(1)(ii), supra.

Accepting the Secretary's construction of the

~1546

applicable regulations, Judge Maurer concluded that task training of the foreman was required because the supervisory exemption applies only to a

supervisor actually and primarily engaged in supervision and not to one engaged in the extraction and production process. The judge concluded that Western Fuels had violated the cited provisions of the Act and regulations and assessed a civil penalty of \$180. 9 FMSHRC 1355 (August 1987)(ALJ). We granted Western Fuels' petition for discretionary review, which was limited to the issue of whether the judge erred in his interpretation of the meaning of the supervisory exemption.

In our prior decision, we disagreed with the judge. We held that the language of section 48.2(a)(1)(ii) "means what it says, that supervisory personnel subject to MSHA approved State certification requirements are exempt from the [relevant] training ... requirements." 11 FMSHRC at 282. We determined: "The exclusion of 'supervisory personnel' from the definition of ['miners' subject to the training requirements in issue] has a plain meaning apparent from any reasonable reading of the regulation. '[S]upervisory personnel' means individuals who are supervisors. Supervisors are persons having authority delegated by an employer to supervise others." 11 FMSHRC at 283. Because it was undisputed that the foreman in question was a mine foreman certified under an MSHA approved State program, it followed that he was exempt from the cited training requirements. In reaching this conclusion, we rejected the Secretary's interpretation of section 48.2(a)(1)(ii), which we found flatly contradicted by the plain and unambiguous language of the regulation. 11 FMSHRC at 284-87.

The Secretary appealed our decision. In a 2-1 opinion, the D.C. Circuit reversed. The Court subscribed to the Secretary's interpretation of the regulation. The Court held that the supervisory exemption applies only to the extent that a supervisor is actually engaged in the act of supervising and does not apply once the person diverts from supervision to actual operation of mining equipment. *Western Fuels-Utah*, supra, 900 F.2d at 320-23. The Court stressed its belief that its deference to the Secretary's position was required as a matter of law. 900 F.2d at 321, 323. We note the observation of dissenting Circuit Judge Edwards that "[t]he Secretary of Labor ... seeks to overturn the judgment of the Commission because, to put it starkly, the regulation should not be held to mean what it says." 900 F.2d at 323 (Edwards, J., dissenting).

~1547

We are obliged to conform to the judgment of the Court in this matter. No other issue remains for disposition in this proceeding. Accordingly, the judge's decision and assessment of civil penalty are reinstated. */

*/ The Commission contacted both parties administratively and determined that neither party wished to be further heard on remand.