

CCASE:
MSHA V. KLAMATH PACIFIC
DDATE:
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TTEXT:
April 21, 1992
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

Docket No. WEST 91-515-M

KLAMATH PACIFIC CORPORATION

BEFORE: Ford, Chairman; Backley, Doyle, Holen, and Nelson, Commissioners
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 February 21, 1992, Commission Chief Administrative Law Judge Paul Merlin issued a Decision Approving Settlement, pursuant to a motion to approve settlement filed by the Secretary of Labor, with respect to eight citations issued to Klamath Pacific Corporation ("Klamath Pacific"). The Secretary stated in the motion, filed December 3, 1991, that Klamath Pacific agreed to the terms of the settlement. In accordance with the motion, the judge assessed a lump sum civil penalty of \$956.80, a reduction in the penalties, \$1,472.00, originally proposed by the Secretary. On December 16, 1991, the Commission received a letter from Klamath Pacific stating that it "contest[ed] all alleged violations." On March 11, 1992, Klamath Pacific filed a letter with Judge Merlin stating that three of the citations "should be dropped," because it did not violate the regulation cited in those citations. For the reasons discussed below, we reopen this proceeding, vacate the judge's decision approving settlement, and remand this matter to the judge for further proceedings.

The judge's jurisdiction in this proceeding terminated when his decision approving settlement was issued on February 21, 1992. 29 C.F.R. • 2700.65(c). The judge's decision became a final decision of the Commission 40 days after issuance. 30 U.S.C. • 823(d)(1). The Commission did not act on Klamath Pacific's March 11, 1992, letter within the period provided in
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the Mine Act for considering requests for discretionary review due to processing error. Under these circumstances, we deem Klamath Pacific's March 11 letter to be a request for relief from a final Commission decision. Relief from a final judgment or order of the Commission is available to a party under Fed. R. Civ. P. 60(b)(1) & (6) on the basis of inadvertence, mistake, surprise, excusable neglect, or any other reason justifying relief.

29 C.F.R. • 2700.1(b) (Federal Rules of Civil Procedure apply, "so far as practicable" and "as appropriate," in the absence of applicable Commission rules). See, e.g., Danny Johnson v. Lamar Mining Co., 10 FMSHRC 506, 508 (April 1988). Klamath Pacific's letters suggest that the decision approving settlement may have been entered in error. Accordingly, we conclude that this matter should be reopened and remanded in order to afford Klamath Pacific the opportunity to present its position to the judge, who shall determine whether final relief from the decision approving settlement is warranted. For the foregoing reasons, we reopen this matter, vacate the judge's order approving settlement, and remand this matter to the judge for appropriate proceedings. Klamath Pacific is reminded to serve counsel for the Secretary with copies of its filings in this proceeding. 29 C.F.R.

2700.7(a)

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T A L L Y S H E E T

Klamath Pacific Corporation, Docket No. WEST 91-515-M

Commissioner Date

Reopen proceeding, vacate Decision Approving Settlement, and remand to judge (order to that effect attached)

Other

Comments:

Please return to W. Lew