

CCASE:

SOL (MSHA) V. C.W. MINING

DDATE:

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TTEXT:

May 18, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEST 92-210
	:	
C.W. MINING COMPANY	:	
	:	

BEFORE: Holen, Chairman; Backley, Doyle and Nelson,
Commissioners

ORDER

BY THE COMMISSION:

Counsel for the Secretary of Labor has filed an unopposed motion to dismiss this proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988) ("Mine Act"). For the reasons that follow, we grant the motion.

On July 18, 1991, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA") issued to C.W. Mining Company ("C.W.") a citation alleging a violation of 30 C.F.R. 75.1103-4(a)(1), a safety standard that, in general, requires the installation of automatic fire sensor and warning device systems along belt conveyors in underground coal mines. The citation alleged that no fire sensor was located at the tailpiece of a belt flight. C.W. contested the citation and this matter proceeded to hearing before Commission Administrative Law Judge August F. Cetti. In his decision, Judge Cetti concluded that C.W. violated the safety standard, affirmed the citation, and assessed a \$20 penalty. 15 FMSHRC 178, 180-84 (January 1993)(ALJ). The Commission subsequently granted C.W.'s Petition for Discretionary Review, which challenged the judge's interpretation of the standard. C.W. contended that the 24 hour grace period for the installation

of heat sensors set forth in 75.1103-4(a)(3) applied to the tailpiece and that, as a consequence, it had not violated the safety standard.

After the Commission granted review, the Secretary filed a Notice of Intent to Vacate Citation and Request Dismissal. The Secretary stated that "[a]fter a careful review of the relevant aspects of his enforcement policy regarding 30 C.F.R. 75.1103-4," he determined that the grace period set forth in 75.1103-4(a)(3) applied to the cited conditions at the tailpiece and that C.W. was not in violation of the safety standard "on the day in question." Sec. Notice at 1-2. The Secretary also represented that counsel for C.W. "consents to vacating the citation and dismissing the appeal." Sec. Notice at 2. On May 3, 1993, an MSHA inspector vacated the subject citation. The Secretary, on May 7, 1993, filed a motion to dismiss this proceeding on

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the basis that C.W.'s appeal is moot.

The Commission has "responsibility under the Mine Act ... to ensure that a contested case is terminated ... in accordance with the Act." Youghiogheny & Ohio Coal Co., 7 FMSHRC 200, 203 (February 1985). A motion by the Secretary to dismiss a review proceeding in which he has vacated the underlying citation or order will ordinarily be granted if "adequate reasons" to do so are present. See Southern Ohio Coal Co., 10 FMSHRC 1669, 1670 (December 1988) and authorities cited. We conclude that adequate reasons exist in this case. The Secretary, as the prosecutor charged with enforcing the Mine Act, determined that he should vacate the citation and seek to dismiss this appeal. The operator does not object to the Secretary's motion and nothing in the record indicates that C.W. will be prejudiced by dismissal of this proceeding.

For the foregoing reasons, the Secretary's dismissal motion is granted, the Commission's direction for review is vacated, as is that part of the judge's decision wherein he affirmed the citation, and this civil penalty proceeding is dismissed.

Arlene Holen, Chairman

Richard V. Backley,
Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner