

CCASE:
SOL (MSHA) V. ISLAND CREEK COAL
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TTEXT:

June 23, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. KENT 92-625
	:	
ISLAND CREEK COAL COMPANY	:	
	:	

BEFORE: Holen, Chairman; Backley, Doyle, 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. (1988)("Mine Act"). On May 4, 1993, Commission Administrative Law Judge Gary Melick issued a Decision Approving Settlement granting a joint settlement motion filed by the Secretary of Labor and Island Creek Coal Company ("Island Creek"). Among the matters settled was Order of Withdrawal No. 3548444 (the "order") issued to Island Creek pursuant to section 104(d)(2) of the Mine Act. 30 U.S.C. 814(d)(2). The parties stated in the motion that Island Creek had agreed to withdraw its contest of the order and pay the \$1,800 penalty proposed by the Secretary.

On June 7, 1993, the parties filed with Judge Melick a joint motion to vacate his Decision Approving Settlement of the order. The motion states that the order was included in two civil penalty proceedings, the present case and KENT 92-1032. The parties assert that Island Creek previously agreed to withdraw its contest in this proceeding because it mistakenly believed that it had lost documents important to its defense. During settlement discussions of KENT 92-1032, Island Creek discovered that the subject withdrawal order was also included in that case and that the missing documents were in its files for that case. The parties ask the judge to vacate the Decision Approving Settlement to afford Island Creek an opportunity to contest the order.

* In their joint motion, the parties assert incorrectly that the withdrawal order was included in two separate dockets because of a "clerical error on the part of the Review Commission's docketing office." J. Motion to Vacate Dec., at 2. The Department of Labor's Mine Safety and Health Administration determines which citations and orders are included in each civil penalty case and the Commission assigns docket numbers to cases as filed by the Secretary.

The judge's jurisdiction in this proceeding terminated when his Decision Approving Settlement was issued on May 4, 1993. 29 C.F.R. 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review with the Commission within 30 days of the decision. 30 U.S.C.

823(d)(2)(A)(i); 29 C.F.R. 2700.70(a). Neither party filed a petition for discretionary review within the 30-day period. Thus, under the Mine Act, the judge's decision became a final decision of the Commission 40 days after its issuance. 30 U.S.C. 823(d)(1). Under these circumstances, we deem the joint motion to be a request for relief from a final Commission decision incorporating a late-filed petition for discretionary review. See Grefco, Inc., 14 FMSHRC 56 (January 1992).

Using Fed. R. Civ. P. 60(b)(1) & (6) for guidance, the Commission has afforded relief from final judgments on the basis of inadvertence, mistake, surprise, excusable neglect, and other reasons justifying relief. 29 C.F.R.

2700.1(b); see, e.g., Klamath Pacific Corp. 14 FMSHRC 535 (April 1992). The Joint Motion to Vacate suggests that the parties may have settled this proceeding by mistake.

Accordingly, we conclude that this matter should be reopened and remanded in order to afford the parties the opportunity to present their position to the judge, who shall determine whether final relief from the Decision Approving Settlement is warranted.

For the reasons set forth above, we reopen this proceeding, vacate that part of the judge's decision that approved settlement of Order No. 3548444 and remand this matter for further proceedings.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner