

CCASE:  
MSHA V. MONTANA RESOURCES  
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19930803  
TTEXT:

August 3, 1993

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 :  
v. : Docket Nos. WEST 92-343-M  
 : WEST 92-705-M  
MONTANA RESOURCES, INC. :

DIRECTION FOR REVIEW

ORDER

The petition for discretionary review filed by the Secretary of Labor is granted. For the reasons set forth below, we vacate the June 24, 1993 Decision Approving Settlement and remand the case to the judge for appropriate proceedings.

On May 12, 1993, Montana Resources, Inc., filed a motion styled, "Respondent's Motion to Approve Settlement and Dismiss Proceedings." The motion and the letter to the judge conveying the motion indicate that the motion was not a joint motion. However, the last paragraph of the motion states, "Wherefore, the parties move the Commission to approve the above settlement agreement...." Motion at 7.

On May 21, 1993, the Secretary responded by letter to the judge advising that respondent's motion to approve settlement contained one paragraph that was not agreeable to the Secretary, "Respondent's language in paragraph 8 goes beyond the statement to which the Secretary agreed...." The Secretary concluded by stating that he "files his objection to paragraph 8, but approves of paragraphs 1-7 and 9." Letter at 1.

On June 24, 1993, the judge issued the subject decision approving the putative settlement without any reference to the disputed paragraph.

On the foregoing record, it is clear that respondent's motion was prematurely filed and should have been denied. The parties had not come to an agreed disposition of this matter. In Peabody Coal Co., 8 FMSHRC 1265 (September 1986), the Commission determined that:

the record must reflect and the Commission must be assured that a motion for settlement, in fact, represents a genuine agreement between the parties, a true meeting of the minds as to its provisions.

Id. at 1266. See also Tarmon v. International Salt Co., 12 FMSHRC 1 (January 1990).

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Accordingly, the decision approving settlement is vacated and the case is remanded to the judge for appropriate proceedings.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner