

CCASE:  
SOL (MSHA) V. HICKORY COAL  
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February 24, 1994

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
:   
v. : Docket No. PENN 93-86  
:   
HICKORY COAL COMPANY :  
:   
BEFORE: Holen, Chairman; Backley and Doyle, Commissioners(Footnote 1)

ORDER

BY THE COMMISSION:

In this civil penalty proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)("Mine Act"), the Secretary of Labor proposed penalties for three citations issued to Hickory Coal Company ("Hickory"). On January 18, 1993, the Secretary filed with Administrative Law Judge Roy J. Maurer a Motion for Decision and Order Approving Settlement, on behalf of the parties. The Secretary's motion stated that he had originally proposed penalties totaling \$112. It stated further that the Secretary had agreed to vacate one citation and that Hickory had agreed to pay civil penalties totaling \$40 for the remaining two citations. The judge approved the settlement motion by decision dated January 24, 1994.

Also on January 24, 1994, apparently after he issued the decision, the judge received from Hickory a Statement in Opposition to the proposed settlement. Hickory's opposition did not dispute the amount of the proposed settlement, but stated that it was "far from agreement [with] statements made by the Secretary's attorney in the motion...." Hickory contended that the motion incorrectly states that it was negligent with respect to the violations.

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Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823(c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.

The judge's jurisdiction in this matter terminated when his Decision Approving Settlement was issued on January 24, 1993.(Footnote 2) Commission Procedural Rule 69(b), 58 Fed. Reg. 12158, 12171 (March 3, 1993), to be codified at 29 C.F.R. 2700.69(b) (1993). 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 within 30 days of the decision's issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem Hickory's Statement in Opposition to be a timely filed Petition for Discretionary Review, which we grant.

"Settlement of contested issues is an integral part of dispute resolution under the Mine Act." Pontiki Coal Corp., 8 FMSHRC 668, 674 (May 1986). Section 110(k) of the Mine Act provides that no contested proposed penalty "shall be compromised, mitigated, or settled except with the approval of the Commission." 30 U.S.C. 820(k). "[T]he 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." Peabody Coal Co., 8 FMSHRC 1265, 1266 (September 1986).

Apparently, Hickory does not dispute that it agreed to settle the proposed penalties for the amount approved by the judge. There is disagreement between the parties, however, as to the terms upon which the settlement is acceptable to each. Because Hickory was not a signatory to the settlement agreement, further consideration by the judge is necessary. See Peabody, 8 FMSHRC at 1267.

For the reasons set forth above, we vacate the judge's decision approving the settlement. We remand this matter to the judge for appropriate further proceedings.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner