

CCASE:  
SOL (MSHA) V. BEECH FORK PROCESSING  
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SECRETARY OF LABOR, :  
 MINE SAFETY AND HEALTH :  
 ADMINISTRATION (MSHA) :  
 :  
 v. : Docket No. KENT 93-406  
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 BEECH FORK PROCESSING, INC. :

BEFORE: Holen, Chairman; Backley and Doyle, 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). On February 18, 1994, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Beech Fork Processing, Inc. ("Beech Fork"), for its failure to answer the Secretary of Labor's proposal for assessment of civil penalty and the judge's September 20, 1993, Order to Show Cause. The judge ordered the payment of a civil penalty of \$4,547. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

In a letter to the Commission dated March 1, 1994, and received on March 7, 1994, Link Chapman, Safety Director of Beech Fork, requests that the order of default be vacated because a response to the order to show cause was filed. A copy of the September 24, 1993, response is attached to Mr. Chapman's letter.

The judge's jurisdiction over this case terminated when his decision was issued on February 18, 1994. Commission Procedural Rule 69(b), 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 its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem Beech Fork's letter to be a timely file Petition for Discretionary Review, which we grant. See, e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September 1988). On the basis of the present record, we are unable to evaluate the merits of Beech Fork's position. In the interest of justice, we remand this matter to the judge, who shall determine whether default is warranted. See Hickory Coal Co., 12 FMSHRC 1201, 1202 (June 1990).

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For the reasons set forth above, we vacate the judge's default order and remand this matter for further proceedings.(Footnote 1)

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Arlene Holen, Chairman

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Richard V. Backley, Commissioner

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Joyce A. Doyle, Commissioner

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1 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.