

CCASE:
FORT UNION V. SOL (MSHA)
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, NW, 6TH FLOOR
WASHINGTON, D.C. 20006

FORT UNION, LTD. :
 :
 v. : Docket No. WEST 94-120
 :
 SECRETARY OF LABOR, MINE :
 SAFETY AND HEALTH :
 ADMINISTRATION (MSHA) :

DIRECTION FOR REVIEW
ORDER

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988). On May 1, 1994 Administrative Law Judge Arthur J. Amchan issued a Decision Affirming Settlement based upon representations made by the Secretary of Labor's counsel in its Motion to Approve Settlement and Order Payment. For the reasons that follow, we vacate the Decision Approving Settlement and remand the case for further proceedings.

The judge's jurisdiction in this matter terminated when his decision was issued on May 1, 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).

On May 31, 1994 Fort Union Ltd. ("Fort Union") timely filed a petition for discretionary review asserting that "the parties did not agree to the language to be set out in the Motion to Approve Settlement" PDR at 2. In support of this, Fort Union has attached a copy of a letter it received from the Secretary's counsel, dated April 22, 1994, the same day the Secretary filed with the judge the motion to approve settlement. The Secretary's letter to Fort Union conveyed a copy of the motion to approve settlement and stated, "If . . . you believe the motion does not correctly state your intentions, you should immediately notify the Administrative Law Judge." On April 29, 1994, Fort Union wrote to the judge, objecting to the settlement motion.

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"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, Fort Union does not dispute that it agreed to settle the proposed penalties for the amount approved by the judge, but there is disagreement between the parties as to the terms upon which the settlement is acceptable. Fort Union was not a signatory to the agreement it now disputes, and 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. (Footnote 1) We remand this matter to the judge for appropriate further proceedings.

Mary Lu Jordan, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

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1 The Commission was unable to complete action in this matter before the 40th day following the judge's decision (30 U.S.C. 823(d)(1)), and accordingly, reopens this matter in order to issue this direction for review.