

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 3, 2010

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. CENT 2009-663-M
ADMINISTRATION (MSHA)	:	A.C. No. 14-01477-191032
	:	
v.	:	Docket No. CENT 2009-664-M
	:	A.C. No. 14-01635-191033
NELSON QUARRIES, INC.	:	

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, Commissioners

DIRECTION FOR REVIEW AND ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006) (“Mine Act”).¹ On July 27, 2010, the Secretary of Labor filed two motions to approve settlement in these proceedings. The motions to approve settlement involved Citation Nos. 6447701 and 6447705, which had been issued to Nelson Quarries, Inc. (“Nelson”) by the Department of Labor’s Mine Safety and Health Administration (“MSHA”). On July 28, 2010, Administrative Law Judge Priscilla Rae issued two decisions granting the motions and ordering Nelson to pay penalties in the sum of \$560 in accordance with the terms of the settlement agreements.

On August 12, 2010, the Judge received from Nelson motions to vacate both decisions approving settlement.² In the motions, Nelson asserts that it did not agree to settle citations in the manner described in the settlement agreements filed by the Secretary and that its representative

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers CENT 2009-663-M and CENT 2009-664-M, both captioned *Nelson Quarries, Inc.*, and both involving similar procedural issues. 29 C.F.R. § 2700.12.

² In addition, on August 4, 2010, the Judge received in Docket No. CENT 2009-664-M, a Motion to Settle, in which Nelson’s representative states that, after considering the “proposed settlement offers” proffered by MSHA, the operator believes that Citation No. 6447705 should be vacated.

had informed the Secretary's Conference and Litigation Representative ("CLR") before the settlement motions were filed that Nelson had not yet approved of any proposed settlement.

The Judge's jurisdiction over these proceedings terminated when she issued her decisions approving settlement on July 28, 2010. 29 C.F.R. § 2700.69(b). 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 Nelson's motions to vacate to constitute timely filed petitions for review, which we grant. *See, e.g., Middle States Res., Inc.*, 10 FMSHRC 1130 (Sept. 1988).

The Commission has made clear that "[s]ettlement of contested issues is an integral part of dispute resolution under the Mine Act." *Tarmann v. Int'l Salt Co.*, 12 FMSHRC 1, 2 (Jan. 1990) (quoting *Pontiki Coal Corp.*, 8 FMSHRC 668, 674 (May 1986)). In this respect, the Commission has observed that "the record must reflect and the Commission must be assured that a motion for settlement [approval], in fact, represents a genuine agreement between the parties, a true meeting of the minds as to its provisions." *Tarmann*, 12 FMSHRC at 2 (quoting *Peabody Coal Co.*, 8 FMSHRC 1265, 1266 (Sept. 1986)); *see also Wake Stone Corp.*, 27 FMSHRC 289, 290 (Mar. 2005) (vacating decision approving settlement where it was "unclear whether the parties achieved a true meeting of the minds").

The record in these proceedings includes two letters dated July 27, 2010, from the Secretary's CLR to Nelson stating that the Secretary anticipates that the Judge would not rule on the motion to approve settlement for a 10-day period, and that if Nelson believes that the motion does not correctly state the operator's intentions, Nelson must immediately notify the Judge and the Secretary. The CLR states that if Nelson does not file an objection within 10 days, the Secretary would assume that the motion correctly embodies the settlement agreement reached by the parties.

The July 27 letters indicate that the settlement agreements filed by the Secretary do not reflect a true meeting of the minds of the parties. Moreover, the representations made by the CLR are contrary to the provisions of interim Commission Procedural Rule 31, which became effective on May 27, 2010. *See* 75 Fed. Reg. 21,987 (Apr. 27, 2010). Commission Procedural Rule 31(b)(1) provides that the "party filing a motion must certify that the opposing party has reviewed the motion, and has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement."³ *Id.* at 21,989.

³ We note further that, contrary to the CLR's expectation, the Judge acted on the settlement motions one day after they were received.

Thus, it appears from the record that the Judge's decisions granting the Secretary's motions to approve settlement were based on proffered agreements that had not been ratified by both parties. *See, e.g., Sec'y of Labor on behalf of Pendley v. Highland Mining Co*, 29 FMSHRC 164, 165-66 (Apr. 2007). Accordingly, in the interests of justice, we vacate the Judge's July 28 decisions and remand this matter to her for further proceedings as appropriate. *See RBS, Inc.*, 26 FMSHRC 751 (Sept. 2004).

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Patrick K. Nakamura, Commissioner

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