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SOL (MSHA) V. MATHIES COAL  
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19870529  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
ON BEHALF OF  
JOSEPH G. DELISIO, JR.,  
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. PENN 86-83-D  
MSHA Case No. CD 85-9

Mathies Mine

v.

MATHIES COAL COMPANY,  
RESPONDENT

SUPPLEMENTAL DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

On November 21, 1986, I rendered a decision in which I concluded that the respondent violated section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(1) by unlawfully interfering with the complainant's right as a representative of miners to accompany federal inspectors during inspections of the mine. To remedy the violation, I ordered the respondent to permit the contestant to drive his private automobile to the mine portal where inspections normally begin or, in the alternative, provide him with company transportation underground to that location, 8 FMSHRC 1772, 1837 (November 1986).

Subsequent to the issuance of my decision, MSHA filed a "Request for Clarification" of my remedial order. Since my jurisdiction terminated upon the release of my decision, I declined to rule on the request, and referred it to the Commission. In an order issued on December 30, 1986, the Commission stayed the running of the 40-day period within which my decision would have become final, and directed the respondent to respond to MSHA's request for clarification.

On January 2, 1987, MSHA filed a supplement to its request for clarification, and on January 7, 1987, the respondent filed its response. Thereafter, on February 3, 1987, the Commission issued another order remanding this matter to me for the purpose of ruling on MSHA's request, 9 FMSHRC 193 (February 1987). In its remand, the Commission stated as follows at 9 FMSHRC 195:

This matter is remanded to the judge to rule upon the request for clarification. The judge may conduct such expedited proceedings as may be necessary for purposes of his ruling. Any party dissatisfied with the judge's further ruling may timely petition the Commission for review of the decision as clarified or amended.

In compliance with the Commission's remand, I scheduled a hearing in Pittsburgh, Pennsylvania, on March 12, 1987, to afford the parties an opportunity to be heard on MSHA's clarification request. However, on March 9, 1987, MSHA's counsel advised me that the parties reached a settlement on the remedial dispute in question, and the hearing was cancelled to afford the parties an opportunity to file their settlement proposal with me for my review and appropriate disposition.

On March 16, 1987, the parties confirmed their proposed settlement, and they filed a Memorandum of Understanding executed on February 25, 1987, by Mr. Edmund Baker, General Manager of the Mathies Mine, Mr. DeLisio, and Mr. Ronald Stipanovich, President, UMWA Local 2244. The pertinent terms of the settlement are as follows:

Mr. DeLisio's daylight shift starting and ending times at the Thomas Portal will be changed to 7:30 a.m. and 3:30 p.m. The change in the daylight shift times will apply only to Mr. DeLisio in his capacity as the designated miner for walkaround inspections. The change would not be applicable should the mine examiner's job at the Thomas Portal be filled by some other miner who is not the designated miner.

Mr. DeLisio will make a good faith effort to promptly begin and proceed with his underground travel. The Company will make a good faith effort to minimize traffic on the haulage line during the 7:30 to 8:00 a.m. period. It is anticipated that such efforts by both parties will enable Mr. DeLisio, under normal conditions, to reach the Linden Portal in time to begin the walkaround with the federal inspector.

The shift adjustment for Mr. DeLisio will be subject to a 90 calendar day trial period. At any time during the trial period either party may terminate the shift adjustment and this understanding. Following the trial period if both parties are in agreement with this agreement then it will become binding. The trial period will begin with Mr. DeLisio's first daylight shift after confirmation of this understanding.

In view of the fact that the settlement agreement was conditioned on the completion of a 90-day trial period, during which time either party could terminate Mr. Delisio's adjusted work schedule and request a further hearing in the matter, I issued a Stay Order on March 27, 1987, staying further disposition of this case in order to allow the 90-day trial period to run its course.

#### Discussion

The 90-day trial period has now been completed, and I have heard nothing further from the parties. After careful consideration of the terms of the settlement between the parties with respect to the remedial aspects of my original decision and order of November 21, 1986, I conclude and find that it reflects a reasonable resolution of the dispute, and I see no reason why it should not be approved. In view of the settlement disposition, MSHA's previously filed Motion for Clarification is moot.

#### CONCLUSION AND ORDER

The settlement agreement entered into by the parties in this matter IS APPROVED. The parties are JOINTLY ORDERED to fully comply with the terms of the settlement agreement. In view of the approval of the settlement, the March 12, 1987, request by the parties to close the record in this case IS GRANTED.

George A. Koutras  
Administrative Law Judge