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LOCAL UNION 1261 V. CONSOLIDATION COAL  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

LOCAL UNION 1261, DISTRICT 22,           COMPENSATION PROCEEDING  
UNITED MINE WORKERS OF  
AMERICA,                                   Docket No. WEST 86-199-C  
  COMPLAINANT                   Emery Mine

v.

CONSOLIDATION COAL COMPANY,  
  RESPONDENT

DECISION

Before: Judge Morris

This is a proceeding for compensation under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the Act).

The parties waived their right to a hearing and submitted the case for a decision on stipulated facts. Briefs were further submitted by the parties in support of their respective positions.

Issue

The issue is whether the miners are entitled to compensation under Section 111 of the Act when they had been withdrawn by the operator before MSHA issued an order under 103(k) of the Act. Applicable Statute

Section 111 of the Act provides as follows:

"ENTITLEMENT OF MINERS"

"Sec. 111. If a coal or other mine or area of such mine is closed by an order issued under section 103, section 104, or section 107, all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift.

If a coal or other mine or area of such mine is closed by an order issued under section 104 or section 107 of this title for a failure of the operator to comply with any mandatory health or safety standards, all miners who are idled due to such order shall be fully compensated after all interested parties are given an opportunity for a public hearing, which shall be expedited in such cases, and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. Whenever an operator violates or fails or refuses to comply with any order issued under section 103, section 104, or section 107 of this Act, all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated. The Commission shall have authority to order compensation due under this section upon the filing of a complaint by a miner or his representative and after opportunity for hearing subject to section 554 of title 5, United States Code.

#### Stipulated Facts

The parties stipulated as follows:

1. The Federal Mine Safety and Health Review Commission has jurisdiction over this matter;
2. The relevant members of Local Union 1261 are underground coal miners who are employed at Consolidation Coal Company's (Consol) underground Emery Mine. The UMWA is the authorized representative of such miners for purposes of this proceeding;
3. The Emery Mine is a mine whose operations and products affect interstate commerce;

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4. On April 16, 1986 at 7:00 p.m., Consol removed its employees from the Emery Mine to insure their safety because of rising gas levels behind the North seals. Consol informed the afternoon shift employees that the mine was idled until further notice because of the rising gas levels. Consol's office manager and foremen called the miners who were scheduled on the next two shifts (graveyard and daylight) and told them "the mine is idle until further notice." All underground miners who worked on that date were paid for the time worked. The day shift employees on April 16, 1986, worked a full shift and the afternoon shift employees on that date worked four and one-half (4 1/2) hours;

5. Concurrent with Consol's management's decision to remove its employees from the mine, Consol notified MSHA and the UMWA of that action;

6. MSHA personnel arrived at the mine on the morning of April 17, 1986, and conducted an investigation which included a review of the air samples taken by Consol. MSHA Inspector Donald B. Hanna issued an order under 103(k) of the Act at 7:14 a.m. on April 17, 1986;

7. The 103(k) order states "Based on the results of air samples taken by the Company . . . this mine has experienced a possible fire, therefore, all persons has (sic) been removed from the mine by Company order to insure their safety and no person shall enter inby the mine portals without modification of this order, after consultation with appropriate persons selected from Company officials, State officials, the miners representative and other persons";

8. At the time the 103(k) order was issued, no Local Union 1261 underground miners were working. After the 103(k) order was issued, no miners could enter the mine nor could mining activities resume until MSHA modified the order;

9. The 103(k) order never alleged that Consol had committed any violation of a mandatory standard and the order was not issued under 104 or 107 of the Act;

10. Consol did not pay any Local Union 1261 underground miners for April 17, 1986;

11. On April 20, 1986, at 2:36 p.m. the 103(k) order was modified to allow mining to resume, and on May 16, 1986, at 2:00 p.m. the order was terminated.

Discussion

The miners involved here seek compensation under Section 111 of the Act. The pivotal stipulated facts establish that MSHA issued a 103(k) order on April 17, 1987. The operator contends the miners are not entitled to compensation on that date because the company had already voluntarily withdrawn them from the affected area.

Previous Commission decisions construing this section are not factually controlling since they involve the last paragraph of the section. Local Union 1609, District 2, United Mine Workers of America v. Greenwich Collieries, (Division of Pennsylvania Mines Corporation, 8 FMSHRC 1302 (1986); Local Union 2274, District 28, United Mine Workers of America v. Clinchfield Coal Company, 8 FMSHRC 1310 (1986); Local Union 1889, District 17, United Mine Workers v. Westmoreland Coal Company, 8 FMSHRC 1317 (1986).

However, I am persuaded by the reasoning in Mine Workers, District 31 v. Clinchfield Coal Company, 1 MSHC 1010 (1971), (Interior Board of Mine Operations Appeals); Mine Workers Local 1993 v. Consolidation Coal Company, 1 MSHC 1668 (1978) (Broderick, J.); and Mine Workers Local 2244 v. Consolidation Coal Company, 1 MSHC 1674 (Fauver, J.). In sum, these cases hold that an MSHA withdrawal order is more extensive in scope than a voluntary withdrawal by the operator. Specifically, an MSHA order prohibits reentry until the danger no longer exists. Further, regardless of the sequence of events or the method by which the miners were originally withdrawn, a mine, or section thereof, is officially closed upon the issuance of an order under the Act. The miners were thus officially idled by the 103(k) order.

It follows, accordingly, that the miners are entitled to compensation under the Act.

John J. Morris  
Administrative Law Judge