

CCASE:
SOL (MSHA) V. LAUREL COAL
DDATE:
19931221
TTEXT:

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 92-1282
Petitioner : A.C. No. 46-01266-03670
v. :
: No. 1 Mine
LAUREL COAL CORPORATION, :
Respondent :
LAUREL COAL CORPORATION, : CONTEST PROCEEDINGS
Contestant :
v. : Docket No. WEVA 91-346-R
: Order No. 3751481; 3/13/91
SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Docket No. WEVA 91-347-R
ADMINISTRATION (MSHA), : Citation No. 3751482; 3/13/91
Respondent :
: Docket No. WEVA 91-348-R
: Citation No. 3751483; 3/13/91
: Docket No. WEVA 91-349-R
: Citation No. 3751484; 3/13/91
: No. 1 Mine
: I.D. No. 46-01266

ORDER GRANTING LIMITED CONTINUANCE

On October 26, 1992, hearings were scheduled in the captioned cases to commence on January 12, 1993, upon mutual agreement of counsel. On November 30, 1992, the Secretary of Labor filed a motion for continuance stating as grounds therefore, the following:

1. The above case involves three citations issued by MSHA Inspector James E. Davis and MSHA Inspector Herbert McKinney for violations resulting in a fatal roof fall. The roof fall in question was investigated by and the Accident Investigation Report authored by Investigator James E. Davis. For this reason, the testimony of Investigator Davis is extremely important to the Secretary's case.

2. Investigator Davis has recently become involved in a criminal matter, however, and as a result, is presently on suspension and unable to participate in any phase of the present MSHA case. The hearing in the criminal matter is presently scheduled for January 20, 1993.

3. There are important enforcement goals at issue in the instant proceeding due to the fatal roof fall accident involved and the \$75,000.00 civil penalty assessment which has been proposed.

4. Under these circumstances, the Secretary contends that the interests of justice require that the January 12, 1993, hearing date in this case be continued until Investigator Davis' criminal matter has been resolved.

Subsequently, in a conference call with both counsel and the undersigned, the Secretary was directed to supplement her motion to detail in writing her specific reasons for seeking a continuance and the specific length of time requested for said continuance. It was noted in that conference call, however, that additional criminal charges had been brought against the same MSHA investigator, and that the charges related to his official conduct as an MSHA employee. Thereafter, the Secretary filed a second motion for continuance stating only as follows:

Now comes the Secretary of Labor (Secretary) by her undersigned attorneys and for the reasons set forth in the Secretary's first Motion for Continuance, moves that the January 12, 1993 hearing scheduled in the above-referenced case be continued for nine months or until the criminal proceeding involving MSHA Inspector James E. Davis is resolved at the trial level, whichever occurs first.

Thereafter, in a response filed December 9, 1992, Laurel Coal Corporation (Laurel), while opposing a continuance for nine months, agreed to a continuance of "approximately three weeks." As grounds for its opposition for a nine month continuance, Laurel stated as follows:

Laurel Coal Corporation received the Secretary of Labor's Second Motion for Continuance in the captioned matter and wishes to register an objection. The roof fall accident at issue in this proceeding occurred over 21 months ago, on March 8, 1991. MSHA conducted an elaborate investigation at that time and prepared an investigative report which is available to all parties.

The basis of the Secretary's Motion is that MSHA Investigator James E. Davis is involved in a criminal proceeding and is unavailable to participate in a hearing for at least nine months. The Investigative Report indicates that MSHA employees John W.H. Baugh, Herbert McKinney, Ricky W. Boggs and Eddie White also participated in the investigation. Although Mr. Davis is indeed unavailable, there are four other MSHA investigators that have first hand knowledge of the roof fall fatality at issue and are available for testimony.

The Secretary's Motion will also cause prejudice to Laurel Coal Corporation. The proposed assessments in this proceeding total \$75,000 and this has caused substantial anxiety and potential hardship to the owners and officers of the Company. In addition, a continuance of nine months will lessen the recollections of the parties involved in this factually intensive case.

Laurel Coal answered all of the Secretary's discovery in November and has scheduled depositions for January 13-15, 1993. Our client very much wants to resolve this matter and respectfully requests that the Court deny the Secretary's motion. Laurel will agree, however, to a continuance of the January 12, 1993 hearing date for approximately three weeks. This concession is based solely upon our inability to conduct pre-trial discovery due to the uncertain status of Mr. Davis. Thank you for your consideration.

Nowhere in the Secretary's motions does she state why the potentially unavailable witness is essential to her case. Based on prior experience, it would appear that an after-the-fact investigator, who has no firsthand information as to the occurrence, would be of only marginal value to the case in any event. It is not represented that he has any firsthand information regarding matters at issue. In addition, there is a serious question whether the current criminal proceedings pending against the investigator would be concluded in nine months. Aside from postponements, such proceedings could very well continue for years in the appellate process. On the other hand, as noted by Laurel, the accident giving rise to the instant cases occurred over 21 months ago and further delays could indeed result in legal prejudice. I note however that Laurel has agreed to a continuance of approximately three weeks.

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Under the circumstances and considering that the trial schedule of the undersigned is already full through the second week of March 1993, I will grant a limited continuance to March 16, 1993. Accordingly, hearings in the captioned cases will now commence at 9:00 a.m. on March 16, 1993, in Charleston, West Virginia. The prehearing requirements must now be met on or before February 12, 1993.

Gary Melick
Administrative Law Judge
703-756-6261

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