

CCASE:

MSHA V. REPUBLIC STEEL

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC

October 9, 1980

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH

ADMINISTRATION (MSHA), Docket Nos. PENN 80-56-R
PENN 80-61-R

v.

REPUBLIC STEEL CORPORATION

DECISION

Republic Steel Corporation contested two withdrawal orders issued by the Secretary of Labor under section 104(b) of the Federal Mine Safety and Health Act of 1977. The administrative law judge issued orders to show cause why the cases should not be continued until either petitions for assessment of civil penalties are filed and consolidated with the withdrawal order contests, or Republic waives further proceedings under 30 CFR Part 100 and agrees to consolidation. Republic informed the judge that it had no objection to a continuance until associated penalty petitions were filed. The judge then issued an order dismissing the withdrawal order contests without prejudice to reinstatement at such time as penalty petitions are filed.

For the reasons expressed in our decision in Eastern Associated Coal Corporation, Docket No. WEVA 79-117-R (October 9, 1980), we hold that as a matter of Commission policy a continuance rather than a dismissal without prejudice is the proper procedural device for postponing adjudication of a contest of a withdrawal order when, as here, postponement is warranted.

Accordingly, the order of dismissal is vacated and the case is remanded for further proceedings consistent with this opinion.

Richard V. Backley, Commissioner

Frank F. Jestrab, Commissioner

A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner

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