

CCASE:  
COUNCIL OF SOUTHERN MOUNTAINS V. MARTIN COUNTY COAL  
DDATE:  
19801112  
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006  
November 12, 1980

Council of Southern Mountains, Inc.

Docket No. KENT 80-222-D

v.

Martin County Coal Corporation

#### ORDER

This proceeding was initiated by a complaint filed by the Council of Southern Mountains alleging that the mine operator violated section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (Supp. II 1978) ["The Act"] by refusing to permit non-employee representatives of miners to enter mine property for the purpose of monitoring miner training classes. On October 3, 1980, the judge issued a document entitled "Decision" in which he found that Martin County Coal's refusal to permit representatives of the Council to enter mine property to attend the training classes constituted discrimination and interference with the Council in violation of section 105(c)(1) of the Act. The judge ordered Martin County to cease and desist from interfering with the Council's attendance at training classes and to notify the Council when and where such classes would be held.

The judge also ordered Martin County "to reimburse the Council for all attorneys' fees and other expenses incurred in connection with the filing and prosecution of the complaint in Docket No. KENT 80-222-D or to otherwise incurred as a direct result of Martin County Coal Corporation's refusal to allow the Council's representative to monitor training classes". The judge's decision did not, however, specify the dollar amount of this award.

On October 22, 1980, the Council filed a motion with the judge asking that the judge clarify whether his decision constituted his "final disposition" of the proceeding and whether the judge reserved jurisdiction for the purpose of implementing his order of relief. The Council said it was seeking this clarification in order to protect its interests regarding the award of costs and expenses. In a letter in response to that motion, the judge said he did not believe that he any longer had jurisdiction to enter an order in the proceeding.

Martin County Coal has filed a petition for review raising issues relating to the merits of the judge's rulings. The Council of Southern Mountains has filed a petition to protect its interest in the implementation of the order awarding costs and expenses.

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Section 113(d)(1) of the Act and Commission Rule 65(a) require that the decision of the judge contain an order that finally disposes of the proceedings. Jackie Ray Hammonds v. National Mines Corporation, KENT 79-345-D, October 24, 1980. Secretary of Labor on behalf of Larry D. Long v. Island Creek Coal Co. and Langley & Morgan Corp., 2 FMSHRC 1698 (July 25, 1980). The issuance of the document on October 3rd entitled "Decision", did not include orders which finally disposed of the proceedings before the judge because the amount of attorneys' fees and costs is not resolved. Thus, the issuance of this document did not initiate the running of the statutory review periods. The judge retains jurisdiction.

Accordingly, the petitions for review are dismissed as premature. The parties may refile petitions once an order awarding costs and expenses is entered. The Executive Director shall return the record to the judge.

Marian Pearlman Nease, Commissioner

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