

CCASE:
MSHA V. YOUGHIOGHENY & OHIO COAL
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FMSHRC-WDC
September 17, 1985

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

Docket No. LAKE 84-98

YOUGHIOGHENY & OHIO COAL CO.

BEFORE: Backley, Acting Chairman; Lastowka and Nelson,
Commissioners

DIRECTION FOR REVIEW AND ORDER

BY THE COMMISSION:

This case is before the Commission on a petition for discretionary review filed by the Youghioghenny & Ohio Coal Company from a decision issued by the Commission administrative law judge on August 8, 1985. 7 FMSHRC ____ (August 1985)(ALJ). Youghioghenny & Ohio's petition for review raises issues concerning (1) the appropriateness of the civil penalties assessed by the judge and (2) the legal sufficiency of the judge's final decision, i.e., the lack of findings of fact, conclusions of law, and the bases for those findings and conclusions. The text of the judge's final decision is as follows:

This matter came on for an evidentiary hearing in Wheeling, West Virginia on May 30 and 31, 1985. At the conclusion of the evidence the trial judge entered a tentative bench decision (Tr. 408-409) finding the two violations charged did, in fact, occur and that the penalties warranted were \$1,000 for Citation 2203748 and its companion closure order and \$950 for Citation 2327363.

Upon receipt of the transcript, the trial judge issued

an order to show cause why the tentative decision should not be confirmed as the final disposition of this matter. The operator having failed to show cause, it is ORDERED that the tentative decision of May 31, 1985 be, and hereby is, ADOPTED and CONFIRMED as the final disposition of this case. It is FURTHER ORDERED that the operator pay the amount of the penalty found warranted, \$1,950, on or before Monday, August 26, 1985.

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We conclude that the judge's decision of August 8, 1985 violates Commission Procedural Rule 65(a). 29 C.F.R. §2700.65(a). Rule 65(a), titled "Decision of the Judge", provides that the judge's decision "shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record" In addition, Rule 65(a) also provides, "If a decision is announced orally from the bench, it shall be reduced to writing after the filing of the transcript." The judge's decision in this case fails to meet the clear and important mandate of Rule 65(a). See Kerr-McGee Nuclear Corporation, 1 FMSHRC 1783 (November 1979).

Accordingly, the judge's decision is vacated and the case is remanded to the judge for entry of a decision in accordance with the Commission's Rules of Procedure. In view of our holding concerning Rule 65(a), we do not address at this time the penalty-related arguments that the operator raises in its petition for review. Following the issuance of the judge's decision on remand, any party adversely affected may seek Commission review. 30. U.S.C. §§ 823(d)(2)(A)(i) & (ii).

Richard V. Backley, Acting Chairman

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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