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MSHA V. PEABODY COAL
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FMSHRC-WDC
September 15, 1986

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No.LAKE 83-73

PEABODY COAL COMPANY

BEFORE: Chairman Ford; Backley, Doyle, lastowka and Nelson,
Commissioners

ORDER

BY THE COMMISSION:

This matter comes before us as a result of Peabody Coal Company's response to the Secretary of Labor's Motion for Approval of Settlement. The Response was submitted to the presiding Commission Administrative Law Judge William Fauver after he issued his Decision Approving Settlement. For the following reasons, we vacate the order approving settlement and remand.

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982) (the "Mine Act"), the Secretary alleged two violations by Peabody of 30 C.F.R. § 75.200, the mandatory roof control standard for underground coal mines. Following the filing of the Secretary's penalty proposal and Peabody's contest of the proposal, the matter was assigned to Judge Fauver. Subsequently, the Secretary moved for and received numerous continuances on the grounds that there was pending against Peabody a criminal action brought under section 110(d) of the Mine Act, 30 U.S.C. § 820(d), and based upon incidents involving the alleged violations in this civil penalty proceeding.

On June 12, 1986, the Secretary advised Judge Fauver that the criminal case had been resolved by Peabody entering a guilty plea to two violations of section 110(d). The Secretary stated that the parties had agreed to settle the subject civil penalty proceeding.

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On August 11, 1986, counsel for the Secretary filed with the judge his Motion For Approval of Settlement. Although counsel for Peabody did not formally join in or sign the motion, the motion stated that counsel for Peabody "authorized... the attorney for ... [the Secretary] to file [the motion]." The motion recited the facts pertaining to Peabody's guilty plea in the criminal proceeding. The motion also asserted facts relating to the alleged violations in the civil penalty proceeding and to the statutory civil penalty criteria. Finally, the motion specified civil penalties deemed appropriate for the violations. Under the Commission's procedural rules Peabody's response, if any, to the Secretary's motion was due by August 23, 1986. 29 C.F.R § 2700.8 and 2700.10(b).

On August 12, 1986, the judge approved the settlement and dismissed the civil penalty proceeding. On August 20, 1986, counsel for Peabody submitted to the judge a response to the Secretary's motion. In the response counsel for Peabody took issue with portions of the Secretary's motion. Counsel asserted that the Secretary's motion referenced facts that had been stricken from the record of the criminal proceedings and counsel objected to language in the Secretary's motion bearing upon the gravity of the alleged violations and upon Peabody's negligence. Counsel stated, however, that aside from these objections, Peabody agreed with and adopted the Secretary's motion for approval of settlement. Counsel requested that the judge "approve the settlement... and make this Response and the objections herein a part of the record in this case."

Although Peabody's response was directed to Judge Fauver his jurisdiction in the case had terminated upon issuance of his decision approving the settlement. 29 C.F.R. § 2700.65(c). Under the Mine Act and the Commission's procedural rules, once a judge's decision has issued, relief from the decision may be sought by filing with the Commission a petition for discretionary review within 30 days of the decision. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). Although Peabody's response to the Secretary's motion is not in the form of a petition for discretionary review, we will treat the response as an implied request for relief and remand the matter to the judge.

"Settlement of contested issues is an integral part of dispute resolution under the Mine Act." Pontiki Coal Corp., 8 FMSHRC 668, 674 (May 1986). Section 110(k) of the Mine Act provides that no contested proposed penalty "shall be compromised, mitigated, or settled except with the approval of the Commission." 30 U.S.C. § 820 (k); see also 29 C.F.R. § 2700.30(a). Approval of a settlement by a Commission

administrative law judge must be based upon "principled reasons," Knox County Stone Co. Inc., 3 FMSHRC 2478, 2480 (November 1981), including consideration of the reasons for the proposed settlement and a weighing of the statutory penalty criteria. Davis Coal Co., 2 FMSHRC 619 (March 1980). Equally important, the record must reflect and the Commission must be assured that a motion for settlement, in fact, represents a genuine agreement between the parties, a true meeting of the minds as to its provisions.

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Here, Peabody's response raises questions regarding the parties' agreement as to the statutory penalty criteria of gravity and negligence. Despite Peabody's stated acquiescence in the ultimate approval of the Secretary's settlement motion, it is clear that there is some disagreement between the parties regarding the precise terms upon which the settlement is acceptable to each. Because Peabody was not a signatory to the "agreement" it now disputes in part, further proceedings are necessary. The questions raised by Peabody's response must be considered in the first instance by the judge.

Accordingly, we accept Peabody's response for filing. The judge's decision approving settlement is vacated. We remand this matter to be judged for consideration of the impact of Peabody's response upon the settlement process.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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