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UMWA V. CLINCHFIELD COAL
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FMSHRC-WDC
SEP 26, 1986

LOCAL UNION 2274, DISTRICT 28,
UNITED MINE WORKERS OF AMERICA

v.

Docket No. VA 83-55-C

CLINCHFIELD COAL COMPANY

BEFORE: Backley, Doyle, Lastowka, and Nelson, Commissioners

DECISION

BY THE COMMISSION:

In this compensation proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), the issue presented is whether miners idled following an underground mine explosion are entitled to one-week compensation pursuant to the third sentence of section 111 of the Mine Act. 1/ Former Commission Administrative Law

1/ The first three sentences of section 111 provide:

Entitlement of miners to full compensation

[1] If a coal or other mine or area of such mine is closed by an order issued under section [103] ... section [104] ..., or section [107] of this [Act], all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. [2] If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to

full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. [3] If a coal or other mine or area of such mine is closed by an order issued under section [104] ... or section [107] of this [Act] for a failure of the operator to comply with any mandatory health or safety standards, all miners who are idled due to such order shall be fully compensated after all interested parties are given an opportunity for a public hearing, which shall be expedited in such cases, and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. ...

30 U.S.C. § 821 (sentence numbers and emphasis added).

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Judge Charles C. Moore, Jr., denied the compensation claim filed by the United Mine Workers of America ("UMWA"), holding that the section 107(a) order of withdrawal that he determined had idled the miners failed to allege, and was not modified to allege, a violation of a mandatory health or safety standard. 6 FMSHRC 1782 (July 1984)(ALJ). In light of our decision this date in Loc. U. 1889, Dist. 17, UMWA v. Westmoreland Coal Co., Docket No. WEVA 81-256-C, we reverse and remand.

The compensation claim at issue arose following an underground explosion that occurred at Clinchfield's McClure No. 1 underground coal mine in Dickenson County, Virginia, on June 21, 1983. On the morning of June 22, 1983, at 3:42 a.m., an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA"), Al Castenedo, issued a withdrawal order, pursuant to section 103(k) of the Mine Act, that affected the entire mine. 2/ The withdrawal order stated:

A fatal mine explosion has occurred in the 2 Left active section. This order is issued to assure the safety of any person in the coal mine until an examination or investigation is made to determine that the mine is safe to work. Only those persons selected from the company, state and miners representatives, officials and other persons who are deemed by MSHA to have information relevant to the investigation may enter or remain in the affected area.

At 4:00 a.m. the same morning, the inspector issued a second withdrawal order. This order, issued pursuant to section 107(a) of the Act, cited the existence of an imminent danger. It also covered the entire mine. The withdrawal order stated:

2/ Section 103(k) states:

Safety orders; recovery plans

In the event of any accident occurring in a coal or other mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the coal or other mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in such mine or to recover the

coal or other mine or return affected areas of such mine to normal.

30 U.S.C. § 813(k). Orders issued pursuant to section 103(k) or section 103(j), 30 U.S.C. § 813(j), are commonly referred to as "control orders" since they are the means by which the Secretary may assume initial control of a mine in the event of an accident, in order to protect lives, initiate rescue and recovery operations, and preserve evidence.

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A fatal mine explosion has occurred in the 2 Left active section. This order shall remain in effect until all the conditions, practices and causes of the explosion have been corrected. [3/]

The section 107(a) imminent danger order was terminated on July 18, 1983, and on September 30, 1983, the UMWA filed its claim for one-week compensation based on the imminent danger withdrawal order and on alleged violations of mandatory standards found by MSHA inspectors during their subsequent investigation of the explosion.

In an unreported order issued on December 16, 1983, the administrative law judge denied Clinchfield's motion to dismiss the UMWA's compensation claim. The judge rejected Clinchfield's argument that the miners already had been idled by the initial section 103 "control" order and, therefore, could not have been idled by the section 107(a) imminent danger order as required under the third sentence of section 111. Noting that compensation under the third sentence of section 111 could be initiated only by an order issued pursuant to sections 104 or 107 of the Mine Act, the judge concluded that the section 103 order was irrelevant to the UMWA's claim under the third sentence of section 111. He reasoned that the subsequent section 107(a) order was like "a second padlock on the door," which prevented the miners from entering the mine just as the first order had withdrawn them initially. However, the judge concluded that, for purposes of the one-week compensation claim, the idlement must result from "an order which charges a violation of the health or safety standards." (Emphasis added.) The judge retained

3/ Section 107(a) provides:

Procedures to counteract dangerous conditions

(a) Withdrawal orders

If, upon any inspection or investigation of a coal or other mine which is subject to this Act, an authorized representative of the Secretary finds that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section [104](c) of this [Act], to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that

such imminent danger and the conditions or practices which caused such imminent danger no longer exists. The issuance of an order under this subsection shall not preclude the issuance of a citation under section [104] of this [Act] or the proposing of a penalty under section [110] of this [Act.]

30 U.S.C. § 817(a).

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jurisdiction in order to determine "[w]hether MSHA, after completing its investigation can effectively modify the imminent danger order or take some other action which would allow the miners to prevail in this case." 4/

In a summary decision issued July 23, 1984, the judge denied the UMWA's compensation claim. Taking judicial notice of MSHA's official accident investigation report, and expressing surprise that MSHA apparently had given no thought to modifying the section 107(a) order to allege violations of mandatory standards, the judge concluded:

The mine was closed because an inspector thought an imminent danger existed not because he thought there was "a failure of the operator to comply with any mandatory health or safety standards." The fact that the explosion that led to the order was actually, in accordance with my assumptions, caused by the violations does not affect the fact that the inspector did not issue the order "for a failure of the operator to comply with ... safety standards."

6 FMSHRC at 1784.

We granted the UMWA's petition for discretionary review, permitted the Secretary of Labor to file an amicus curiae brief, and heard consolidated oral argument in this matter and two other compensation cases decided this date, Westmoreland, supra and Loc. U. 1609, Dist. 2, UMWA v. Greenwich Collieries, Div. of Pennsylvania Mines Corp., Docket No. PENN 84-158-C. We now reverse.

In Westmoreland we examine thoroughly the language, structure, and purposes of section 111, and its third sentence in particular. The material issues presented in the instant matter are identical to issues resolved in Westmoreland and that decision, accordingly, controls our disposition here.

For the reasons stated in Westmoreland, slip op. at 7-11, we agree in result with the judge that the initial section 103(k) control order did not preclude, for safety or compensation purposes, the subsequent issuance of the section 107(a) imminent danger withdrawal order. The orders had concurrent operation and effect. For purposes of the third sentence of section 111, the mine was closed by and the miners were idled due to the subsequent section 107(a) order.

4/ On March 26, 1984, MSHA issued one section 104(d)(1) citation

and four section 104(d)(1) withdrawal orders, three of which alleged that the cited violations had resulted in a methane ignition, which caused the explosion on June 21, 1983, at the McClure mine. Clinchfield did not contest the citation or orders and paid \$47,500 in civil penalties. (No issues are presented in this proceeding regarding the validity of the citation or orders.)

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Further, for the reasons stated in *Westmoreland, slip op.* at 11-13, we reverse the judge's determination that a section 107(a) order, whether as issued or as subsequently modified, must itself allege a violation of a mandatory standard in order to trigger entitlement to one-week compensation. We conclude, in accordance with *Westmoreland*, that allegations of violation cited subsequently by MSHA may supply the required nexus under section 111 between the section 107(a) imminent danger order and an underlying violation of a mandatory standard. *Westmoreland, slip op.* at 13-14.

As noted above, *Clinchfield* did not contest the subsequently issued section 104(d)(1) citation and three section 104(d)(1) withdrawal orders. Instead, it paid the penalties proposed by the Secretary. Both the Secretary and the UMWA have asserted that those allegations of violation cited in the section 104(d) citation and orders supply the required causal nexus between the imminent danger order and an underlying violation for purposes of entitlement to one-week compensation. That question now remains to be determined in this matter.

Accordingly, we remand this proceeding to the Chief Administrative Law Judge for assignment to himself or another Commission administrative law judge to determine whether the violations referenced above provide the required causal nexus between the section 107(a) imminent danger order and an underlying violation of a mandatory standard. If such a relationship is found, the presiding judge shall take appropriate action to identify affected miners and determine the amount of compensation due to each miner.

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For the foregoing reasons, the judge's decision is reversed.
This matter is remanded to the Chief Judge for further proceedings
consistent with this decision. 5/

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

5/ Commissioner Ford did not participate in the consideration or
disposition of this case.

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