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LOCAL UNION V. CLINCHFIELD COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

LOCAL UNION 2274, DISTRICT 28,
UNITED MINE WORKERS OF AMERICA
(UMWA),

COMPLAINANT

v.

CLINCHFIELD COAL COMPANY,
RESPONDENT

COMPENSATION PROCEEDING

Docket No. VA 83-55-C

McClure No. 1 Mine

DECISION

Before: Judge Gary Melick

This case is before me on remand from the Commission to determine whether certain allegations of violations cited in a section 104(d)(1) citation and three section 104(d)(1) withdrawal orders provide the required nexus between the section 107(a) imminent danger withdrawal order at bar and an underlying violation of a mandatory standard. (FOOTNOTE 1) The Commission further directed that if such a relationship is found to exist then appropriate action should be taken to identify affected miners and determine the amount of compensation due each miner.

In this case the UMWA seeks one-week compensation pursuant to section 111 of the Act for certain miners employed by the Clinchfield Coal Company (Clinchfield) as of June 23, 1983. (FOOTNOTE 2) In conjunction with the motion for summary decision now before me the parties stipulated that "a causal nexus existed between the 107(a) order issued to Clinchfield's McClure No. 1 Mine on June 23, 1983, and a violation of a mandatory standard in the McClure No. 1 Mine." The parties also stipulated to a list of miners on whose behalf the UMWA was seeking compensation, their rates of pay as of June 23, 1983, and the amount of compensation sought on behalf of each of those miners.

As stated in the UMWA motion, the compensation claim at bar arose following an underground explosion at the McClure No. 1 Mine on June 21, 1983. Subsequently at 4:00 a.m. on June 22, 1983, the Federal Mine Safety and Health Administration (MSHA) issued a Section 107(a) "imminent danger" withdrawal order covering the entire mine. The motion further states that on March 26, 1984, MSHA issued one section 104(d)(1) citation and four section 104(d)(1) withdrawal orders, of which three alleged that the cited violations had resulted in a methane ignition which caused the explosion. Clinchfield did not contest the citations or orders and paid the civil penalties assessed by MSHA. On September 30, 1983, the UMWA filed this claim for one-week compensation under section 111 of the Act.

In its opposition to the motion for summary decision Clinchfield argues that the prerequisites for awarding the one-week compensation under section 111 of the Act have not been met. Clinchfield argues that the miners were not "idled by" an order issued "for a failure for the operator to comply with any mandatory health or safety standards" as that section requires. Clinchfield observes that this argument has been rejected by the Commission in the September 26, 1986, decision (8 FMSHRC 1310) remanding this case for the instant proceedings but submits the argument to preserve its appeal rights.

Indeed it is clear that Clinchfield's argument has been rejected by the Commission and within the framework of the stipulations presented herein it is established that the miners at issue were in fact "idled by" an order issued "for a failure of the operator to comply with any mandatory health or safety standard" as required by section 111. The UMWA Motion for Summary Decision is therefore granted. Commission Rule 64, 29 C.F.R. 2700.64. The miners are accordingly entitled to one-week compensation under that section 111 of the Act.

The UMWA is also seeking interest on the compensation awarded in these proceedings dating from July 13, 1983. The award of interest is indeed consistent with the decisions of this Commission and the purposes of section 111 of the Act. It is accordingly awarded in this case. Mine Workers, Local 5869 v. Youngstown Mine Corporation, 1 FMSHRC 990 (1979); Peabody Coal Company v. Mine Workers, 1 FMSHRC 1785 (1979). Such interest shall be calculated in accordance with the formula set forth by the Commission in Bailey v. Arkansas-Carbona Company and Walker, 5 FMSHRC 2042 (1983). While the UMWA points out that the National Labor Relations Board has recently adopted a revised procedure for computing interest on back pay awards in light of the Tax Reform Act of 1986 (see New Horizons for the Retarded, Inc., 283 NLRB No. 181, (May 28, 1987) this Commission has not adopted the revised formula. The UMWA request for costs and attorneys fees is denied. Aleyeska Pipeline Service Co. v. The Wilderness Society et al., 421 U.S. 240 (1975).

ORDER

Clinchfield Coal Company is hereby directed to pay the following miners the noted compensation plus interest from July 13, 1983, in accordance with the formula set forth in Secretary v. Arkansas-Carbona Company and Walker, 5 FMSHRC 2042 (1983):

(8:00 a.m. - 4:00 p.m. Shift)

Miner	Compensation
Virgil Lee Fuller	\$505.70
Garneth Duty	505.70
Jerry Martin	536.60
Homer Gouge	536.60
Darrel J. McCowan	496.80
Jerry A. Hibbitts	505.70
Billy J. Coffey	491.60
Millard Harris	505.70
Danny McConnell	491.60

Edward M. Miller	536.60
Roger D. Austin	536.60
Kenneth Stacy	536.60
Sherman Matney	499.90
Sammy M. Smith	505.70
Randy Beverly	491.60
James R. Stevens	536.60
Edgar B. Moore	493.90
Bobby Murphy	536.60
Ollie Stanley	536.60
Junior Rainwater	506.60
Richard H. Baker	506.60
Joseph A. Counts	536.60
Robert L. Seitz	505.70
David R. Fuller	493.90
Jimmy L. Honaker	536.60
Harold B. Honaker	493.90
Nancy E. Mullins	505.70
H.D. Vencil	491.60
Dewey E. Stanley	499.45
Carrol Rasnick	499.90
James W. Mullins	493.90
Jerry W. Owens	536.60
Ronald M. Mann	493.90
Kemper Hill, Jr.	493.90
Garnice Hill	536.60
George P. Willis	536.60
Gaye N. Little	499.90
Demus A. Stanley	517.70
Roger L. Bentley	499.90
Kenneth L. Fleming	499.90
Ronald L. Welch	505.70
Randall L. Campell	493.90
C.E. Edwards	493.90
Fred Allen Mullins	505.70
Bobby A. Wampler	476.90
Billy B. Rose	496.80
Willis D. Rasnake	536.60
Larry G. Woods	536.60
Forgy Ray Pennell	493.90
Lowell Bise	536.80
Randy Smith	505.70
Billy G. Mullins	536.80
Marquis R. Neece	493.90
Michael W. Blackson	536.60
Jerry Deel	505.70
J.C. Vance	493.90
James C. Stanley	536.60
Michael D. Rose	505.70
John B. Yates	505.70

Robert N. Phipps	517.70
Freddie J. Fultz	505.90
Lee O. Ratliff	548.60
Danny C. Edwards	505.90
Ricky L. Austin	517.70
Avery Boyd	505.90
Michael James	517.70
Joe Kiser	517.70
Danny R. Mullins	517.70
David S. Yates	517.70
Walter A. Deel	548.60
Paul V. Payne	548.60
Donald Williams	517.70
William C. Jackson	505.90
Henry Larry Phipps	548.60
David L. Stanley	548.60
Gary Lee Moore	548.60
Lonny F. Deel	548.60
Earnest E. McCoy	548.60
Darrell W. Thomas	478.80
Thelma Deel	517.70
Dennis Wagner	548.60
Lenville Mullins	517.70
Randy Breeding	548.60
John Mullins	548.60
Everette Miles	517.70
Kemper Damron	548.60
Earl Turner	548.60
James Stapleton	505.90
Gallie Greene, Jr.	505.90
Evelyn Delaney	517.70
James A. Stanley, Jr.	548.60
Michael Lane	548.60
James W. Hamilton	508.80
A. Paul Blevins	517.70
Urban Bartley	508.80
Ronnie Brown	505.90
Kellis C. Barton	548.60
Kile Spangler	548.60
Robert M. Dixon	548.60
Danny L. Chaffin	508.80
Sarah W. Rose	517.70
Curtis W. Franks	548.60
Jim R. Mullins	219.44
Tim Ruff	517.70
Jason E. McKinney	548.60
Jerry L. Jenkins	508.80
Steve J. Hamilton	517.70
Greg S. Fleming	517.70
Jim R. Hearl	548.60

~1282

Bob J. Martin	505.90
James E. Holbrook	548.60
James Wagner	548.60
Abraham P. Stevens	548.60
Victor Wallace	548.60
Randy D. Lane	548.60
Wade P. Mullins	548.60
Herbert Johnson	517.70
William R. Johnson	505.90

Miner Compensation

(Midnight Ä 8:00 a.m. shift)

Fred A. Counts	552.60
William F. Hartsock	509.90
Larry L. Fields	509.90
Jerry L. Phillips	509.90
Timothy Jennings	527.60
Greg Phillips	509.90
Glen Meade	552.60
Don C. Bush	512.80
Joseph B. Stanley	552.60
Margaret J. Mullins	509.90
Charles Musick	552.60
Dan Honaker	552.60
Laurence Skidmore	509.90
Bill V. Brooks	552.60
Felix J. Boyd	509.90
Earl Castle, Jr.	249.21
Dan R. Musick	509.90
Carter Harrison	552.60
David Gilmer	552.60
Lisa Dingus	552.60
Charlene Ball	552.60
Sue Ellen Fleming	520.00
Oliver B. Rasnake	552.60
Harold D. Stevens	520.00
Marvin E. Counts	512.60
Gary L. Stallard	552.60
Gary N. Mullins	552.60
Leonard Taylor, Jr.	509.90
Steve Viers	520.00
Ron G. McReynolds	552.60
Ron D. Deel	552.60
Maynard F. Heaton	552.60
Walter L. Browning	552.60
James Gray Puckett	512.80
Thermon H. Powers	509.90
Jim D. Sexton	512.80

Ernie J. Meade	515.90
Robert E. O'Quinn	552.60
Robert C. Bailey	509.90
Clyde Harris	509.90
David L. Stanley	203.96
Bob D. Wolfe	509.90
H. Fayne Rasnick	552.60
Bill R. Robinson	552.60
James Turner	552.60
Jeff H. Greear	552.60
Ted R. Smith	512.80
Tony P. Owens	552.60
Joe F. Harrison	552.60
Jiles R. Branham	552.60
Lacy P. Couch	552.60
Jerry D. Childress	527.60
Irene J. Castle	509.90
Anthony Lynch	509.90
Darrell Perkins	521.60
Lawrence Carico	552.60
Charles R. Senter	509.90
Ramey Presley	506.70
Sam W.C. Hughes	516.32
Harold R. Hall	516.32
Gleason R. Austin	550.56
Bill R. Jessee	534.56
Bill G.Large	534.56
William W. Carty	524.80
Walter R. Owens	524.80
James S. Johnson	524.80
R.R. Trent, Jr.	524.80
Ron G. Arney	524.80
William A. Patton	524.80
Paul V. Kennedy	534.56
Dennis Steffey	550.56
Dennis King	536.80
Harless Mullins	534.56
George J. Hughes	536.80
Jim Edwards	536.80
Wiley R. Compton	536.80
Charles L. Ventro	536.80
Richard Neilson	550.56
John Hobson	536.80
Harry T. Mullins	536.80
G.C. Rasnick	536.80
Glen F. Gillenwater	536.80
Bobby Hawkins	536.80
Benny Vance	536.80
David W. Lee	550.56
Joe Tate	550.56

~1284

Ben Collins	550.56
Hermon Brooks	550.56
Jim Martin	550.56
Bill West	524.80
William E. Lester	510.00
Harold A. Vanover	534.56
Barbara A. Artrip	510.28

Gary Melick
Administrative Law Judge
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~FOOTNOTE_ONE

1 Statutory references herein are to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et. seq., the "Act". The remand order was based upon the Commission's decision in Local Union 1889, District 17, UMWA v. Westmoreland Coal Company, 8 FMSHRC 1317 (1986), that a section 107(a) order, whether as issued or subsequently modified, need not itself allege a violation of a mandatory standard in order to trigger entitlement to the one-week compensation provisions under Section 111 of the Act. The Commission also concluded therein that allegations of violations subsequently cited may supply the required nexus under section 111 between the section 107(a) imminent danger order and an underlying violation of a mandatory standard.

~FOOTNOTE_TWO

2 Section 111 provides, as relevant hereto, as follows:

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 title 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.