

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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MAR 25 2014

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

Petitioner

v.

ARMSTRONG COAL CO, INC.,

Respondent

CIVIL PENALTY PROCEEDING

Docket No. KENT 2013-185
A.C. No. 15-19358-303177

Mine: Parkway Mine

**AMENDED ORDER DISMISSING 24 CITATIONS FOR FAILURE OF THE
SECRETARY TO COMPLY WITH AN ORDER OF THE COURT¹**

Before: Judge Steele

On the 14th day of January, 2014, Respondent filed a Motion for an Order to Show Cause, stating that the Secretary had been unresponsive to an Order of the Court. The Court had ordered the parties to confer on stipulations in a pending Motion for Partial Summary Decision, which concerned jurisdictional matters in 24 of 49 citations issued in Docket No. KENT 2013-185.²

As noted in Respondent's Motion for an Order to Show Cause, a telephone hearing was held on July 23, 2013, in which the Court informed the parties that more factual information was required in order to make a ruling on the pending Motion for Partial Summary Decision. After discussion of the issues, the parties agreed that perhaps certain joint stipulations could be submitted that would assist the Court in the determination of essential facts. Based on this agreement, the Court ordered the parties to confer and submit joint stipulations within 45 days, or by September 6, 2013.

The record does not indicate that the Secretary made any attempt to confer with the Respondent within the timeframe ordered. The Order was issued in the summer. Summer became autumn, and autumn turned into winter. The Secretary remained unresponsive.

¹ This Order has been amended to list the 24 of 49 citations that were referenced in the March 24, 2014 order.

² These citations are 8509488, 8509500, 8509756, 8509489, 8509759, 8509757, 8509751, 8509490, 8509752, 8509491, 8509760, 8509758, 8509753, 8509492, 8509493, 8509754, 8509494, 8509495, 8509496, 8509497, 8509761, 8509498, 8509755, and 8509499.

Finally, Respondent filed a Motion for an Order to Show Cause on January 14, 2014. In his response, the Secretary stated, incorrectly, that Respondent's Motion was predicated on the Secretary's refusal to agree to stipulations proffered by Respondent, and admitted that there was a delay in notifying the Court regarding "the acceptance, or not, of these proposed stipulations..." The Secretary stated in his response that only two of the 10 proposed stipulations of Respondent were acceptable and again acknowledged the delay, stating that it "takes responsibility for the delay."

On March 11, 2014, the Court issued an Order to Show Cause, directing the Secretary to show good cause within 11 days for the reason there was a failure to comply with the 45-day deadline. The Secretary's only response to this Order was a retransmission of the response to Respondent's Motion for an Order to Show Cause. There has yet to be an explanation to the Court as to why there has been no compliance.

In a prehearing Order, dated February 13, 2013, the parties were obligated to communicate with each other in good faith regarding substantive issues. The Order stated that failure to do so was grounds for dismissal of the offending party's case. Moreover, 29 C.F.R. § 2700.1(b) provides that a judge may be guided by the Federal Rules of Civil Procedure (FRCP) on procedural matters not regulated by the Commission's rules. Rule 41(b) of the FRCP provides for the involuntary dismissal of the action, or any claim, where the plaintiff (here the Secretary) has failed to comply with a court order.

It is therefore **ORDERED** that the 24 citations which are the subject of Respondent's Motion for Order to Show Cause be dismissed for failure to comply with the Court's Order to Confer regarding stipulations.

William S. Steele

William S. Steele
Administrative Law Judge

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