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UMWA V. WESTMORELAND COAL
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FMSHRC-WDC
September 26, 1986

LOCAL UNION 1889, DISTRICT 17,
UNITED MINE WORKERS OF AMERICA

v.

Docket No. WEVA 81-256-C

WESTMORELAND COAL COMPANY

BEFORE: Backley, Doyle, Lastowka and Nelson, Commissioners

DECISION

BY THE COMMISSION:

This proceeding under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), raises important issues concerning the compensation provisions of section 111 of the Mine Act. 30 U.S.C. § 821. 1/ The United Mine Workers of America ("UMWA" or "Union") seeks

1/ The first four 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

(footnote 1 continued)

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compensation from Westmoreland Coal Company ("Westmoreland") pursuant to the third sentence of section 111 for an idlement of miners that the Union seeks to link to an imminent danger withdrawal order issued following an explosion at one of Westmoreland's underground coal mines. Former Commission Administrative Law Judge Richard C. Steffey dismissed the UMWA's compensation complaint, holding that: (1) for purposes of determining entitlement to compensation, the miners in question were not idled by the imminent danger order issued pursuant to section 107(a) of the Act but by a withdrawal order previously issued pursuant to section 103(j); 2/

Footnote 1 end.

by such closing, or for one week, whichever is the lesser. [4] Whenever an operator violates or fails or refuses to comply with any order issued under section [103] ..., section [104] ..., or section [107] of this [Act], all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated. ...

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

2/ Section 103(j) provides:

Accident notification; rescue and recovery activities

In the event of any accident occurring in any coal or other mine, the operator shall notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a coal or other mine, where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activities in such mine.

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

Section 107(a) provides:

Procedures to counteract dangerous conditions

(footnote 2 continued)

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(2) even if the miners were idled by the section 107(a) order, that order did not allege nor was it modified to allege a violation of a mandatory health or safety standard, which the judge found was required under the third sentence of section 111; and (3) the violations of mandatory standards alleged in 13 subsequently issued section 104(d)(2) withdrawal orders could not constitute a "nexus" between the section 107(a) order and the violation of a mandatory standard. 6 FMSHRC 2192 (September 1984)(ALJ). For the reasons explained below, we conclude that the judge erred in his resolution of each of these questions and reverse and remand.

I.

Facts and Procedural History

The facts were stipulated by the parties and are set forth in the judge's Second Summary Decision. 6 FMSHRC at 2194-96. Briefly, an explosion occurred at approximately 3:30 a.m. on November 7, 1980, in Westmoreland's Ferrell No. 17 underground coal mine located in West Virginia. At 7:30 a.m. on November 7, Inspector Eddie White of the Department of Labor's Mine Safety and Health Administration ("MSHA") issued a section 103(j) withdrawal order that applied to the entire mine. The section 103(j) order provided:

An ignition has occurred in 2 South off 1 East. This was established by a power failure at 3:30 a.m. and while searching for the cause of the power failure, smoke was encountered in the 2-South section. Five employees in the mine could not be accounted for. [The area or equipment involved

Footnote 2 end.

(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 exist. 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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is] the entire mine. The following persons are permitted to enter the mine: Federal coal mine inspectors, West Virginia Department of Mines coal mine inspectors, responsible company officials, and United Mine Workers of America miner's representatives.

One half-hour later, at 8:00 a.m., Inspector White issued a section 107(a) imminent danger withdrawal order also covering the entire mine. The order, which did not allege a violation of any mandatory health or safety standard, stated:

All evidence indicates that an ignition of unknown sources has occurred and five employees cannot be accounted for.

The bodies of the five miners were recovered on November 8, 1980, and the 2-South area of the mine was sealed off. Both withdrawal orders were modified on December 10, 1980, to cover "the seals and areas inby the seals." On July 15, 1982, twenty months after the explosion, MSHA issued 13 section 104(d)(2) withdrawal orders citing violations of mandatory standards based on sworn statements taken during MSHA's investigation of the mine explosion. 3/ The section 107(a) order was not modified to allege violations of mandatory standards, and was terminated on November 15, 1983.

3/ Section 104(d) provides:

Findings of violations; withdrawal order

(1) If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this [Act]. If, during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any mandatory health

or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith

(footnote 3 continued)

The litigation of this matter has followed a complicated course. Some of this history is described in the Commission's previous decision (see *infra*), and will not be repeated in full here. On February 5, 1981, the UMWA filed a complaint under section 111 of the Mine Act seeking compensation for the miners' idlement, which the Union attributed to the withdrawal orders issued on November 7 in the aftermath of the mine explosion. The UMWA's complaint, as later amended, sought, among other things, the limited compensation available under the second sentence of section 111 ("shift compensation") for the miners idled on the November 7 day shift, and one week's compensation under the third sentence of section 111 ("one-week compensation") for all of the idled miners.

On April 28, 1982, the judge issued a Summary Decision, in relevant part granting shift compensation for the miners idled on the November 7 day shift but dismissing without prejudice the Union's claim for one-week compensation on the grounds that the section 107(a) order did not allege a violation of a mandatory standard. 4 FMSHRC 773, 776-79, 784-88 (April 1982)(ALJ). The judge noted that there was "nothing to prevent UMWA from filing a complaint for a week of compensation under the third sentence of section 111 if and when MSHA does modify [the] outstanding imminent-danger order ... to allege one or more violations of the mandatory health and safety standards by Westmoreland." 4 FMSHRC at 789. The judge denied the UMWA's request that he retain jurisdiction of the case and defer final decision pending completion of MSHA's investigation into the causes of the mine explosion. 4 FMSHRC at 788-89. The UMWA filed with the Commission a petition for discretionary review, which was granted on June 6, 1982.

Footnote 3 end.

issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) of this section to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

(2) If a withdrawal order with respect to any area in a coal or other mine has been issued pursuant to paragraph (1), a withdrawal order shall promptly be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in such mine of violations similar to those that resulted in the issuance of the withdrawal order under paragraph (1) until such time as an inspection of such mine discloses no similar

violations. Following an inspection of such mine which discloses no similar violations, the provisions of paragraph (1) shall again be applicable to that mine.

30 U.S.C. § 814(d).

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The major question presented on review was whether the judge had erred in not retaining jurisdiction over the one-week compensation claim. The Commission concluded that he had erred and remanded the case to the judge with instructions to hold the record open to permit the parties to make any appropriate motions or showings upon the completion of MSHA's investigation. Loc. U. 1889, Dist. 17, UMWA v. Westmoreland Coal Co., 5 FMSHRC 1406, 1410-13 (August 1983). The Commission noted the issuance of the 13 section 104(d)(2) orders in July 1982, but expressed no view at that time as to whether these thirteen 104(d)(2) orders or any later modification of the 107(a) Order ... may provide the basis for [one-week] compensation under the third sentence of section 111." 5 FMSHRC at 1413.

In the consolidated notice of contest and civil penalty proceeding involving review of the 13 section 104(d)(2) orders (Docket Nos. WEVA 82-340-R, etc.), Judge Steffey vacated the orders, concluding that they had been improperly issued under section 104(d), but he upheld the assertions of violation underlying the vacated orders. In a later order approving settlement, the judge approved Westmoreland's agreement to pay civil penalties totalling \$38,000 for the violations alleged in the 13 vacated section 104(d) orders. 6 FMSHRC 1267 (May 1984)(ALJ).

In his decision on remand from the Commission in the compensation proceeding, the judge again denied the UMWA's claim for one-week compensation. The judge determined that the miners had been withdrawn by the section 103(j) order, not by the section 107(a) order issued one half-hour later, and that "[t]herefore, UMWA cannot satisfy the first prerequisite under the third sentence of section 111 which requires a showing that miners were withdrawn and idled by the 107(a) order." 6 FMSHRC at 2201. The judge further concluded that even if the miners had been withdrawn by the section 107(a) order it neither alleged at the time of its issuance, nor had it been modified prior to its termination to allege, a violation of a mandatory standard, another prerequisite in the judge's view, for one-week compensation under section 111. 6 FMSHRC at 2202. Despite Westmoreland's payment of civil penalties in settlement of the underlying allegations of violation contained in the 13 vacated section 104(d) orders (*supra*), the judge opined that the orders could not "be said to allege violations as part of an imminent danger order because [the section 104(d) orders] could not have been issued in the first instance without a finding that the violation cited in the order did not cause an imminent danger." *Id*

We granted the petition for discretionary review filed by

the UMWA, and heard consolidated oral argument in this matter and two other similar compensation cases also decided this date, Loc. U. No. 2274, Dist. 28, UMWA v. Clinchfield Coal Co., Docket No. VA 83-55-C, and Loc. U. 1609, Dist. 2, UMWA v. Greenwich Collieries, Div. of Pennsylvania Mines Corp., Docket No. PENN 84-158-C.

II.

Disposition of Questions Presented

This case presents three major issues: (1) whether the issuance of a section 103(j) order precludes a subsequently issued section 107(a) order from serving as a necessary prerequisite for entitlement to one-week compensation under the third sentence of section 111; (2) whether a section 107(a) order must allege, or be modified prior to its termination to allege, a violation of a mandatory health or safety standard in order to trigger entitlement to one-week compensation; and (3) whether a subsequent allegation by the Secretary of a violation of a mandatory standard in a separate citation or order may provide the nexus between the issuance of the 107(a) order and an underlying violation.

These questions center around the meaning of a few key words in the third sentence of section 111 (n.1 supra): What are the relationships intended by the statutory references to a mine being closed "b " a section 104 or 107 order, the miners being idled "due to" such an order, and the order itself having been issued "for" a violation of a standard? 30 U.S.C. § 821 (emphasis added throughout). In our view, the meaning of these words becomes clear when they are viewed in the proper context of section 111 as a purposive whole.

A. The sequence of withdrawal orders

We turn first to the judge's conclusion that the miners had already been idled officially as a result of the prior issuance of the section 103(j) "control" order and, therefore, for purposes of entitlement to one-week compensation, could not have been idled as a result of the subsequent section 107(a) order as required for such entitlement under the third sentence of section 111.

Section 111 is remedial in nature and was not intended by Congress to be interpreted and applied narrowly. The key Senate Report on the bill that was enacted as the Mine Act states:

Miners[,] entitlement resulting from closure orders

As the Committee has consistently noted, the primary objective of this Act is to assure the maximum safety and health of miners. For this reason, the bill provides at Section 11[1] that miners who are withdrawn from a mine because of the issuance of a

withdrawal order shall receive certain compensation during periods of their withdrawal. This provision, drawn from the Coal Act, is not intended to be punitive, but recognizes that miners should not lose pay because of the operator's violations, or because of an imminent danger which was totally outside their control.

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It is therefore a remedial provision which also furnishes added incentive for the operator to comply with the law. This provision will also remove any possible inhibition on the inspector in the issuance of closure orders.

S. Rep. No. 181, 95th Cong., 1st Sess. 46-47 (1977)("S. Rep."), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 634-35 (1978) ("Legis. Hist. (emphasis added). As the Commission has stated previously, "Section 111 is designed to promote safety and protect lives...." Loc. U. No. 781, Dist. 17, *UMWA v. Eastern Assoc. Coal Corp.*, 3 FMSHRC 1175, 1178 (May 1981). The judge's formalistic emphasis on the sequencing of relevant withdrawal orders and his imputation of preclusive effect to the order issued first in time cannot be squared with the language, structure, and purpose of section 111 and other pertinent provisions of the Mine Act.

We have no difficulty with the proposition that only the specific types of withdrawal orders listed in each of the first four sentences of section 111 may serve as prerequisites for entitlement to the forms of compensation mentioned respectively in those sentences. Nevertheless, the focus of section 111 as a whole is on the operator's conduct as it relates to conditions in the mine -- not the chronology of the Secretary's official actions in response to mine accidents or emergencies. Moreover, section 111 contemplates in furtherance of safety that section 103 control orders and other relevant withdrawal orders have concurrent, rather than mutually exclusive, operation and effect.

Section 111 creates a graduated scheme of compensation tying enlarged compensatory entitlement to increasingly serious operator conduct. Thus, upon a mine closure and idlement attributable to the issuance of a section 103, 104, or 107 order, the limited shift compensation described in the first sentences of section 111 is awardable "regardless of the result of any review of such order...." 30 U.S.C. § 821. If, however, the closure and idlement is attributable to a section 104 or 107 order "issued ... for a failure of-the operator to comply with any mandatory ... standard," the entitlement under the third sentence of section 111 is to one-week compensation. *Id.* Finally, and most seriously, if an operator fails to comply with a section 103, 104, or 107 order, the miners who otherwise would have been withdrawn are to be paid the full compensation specified in the fourth sentence of section 111 in

addition to their regular pay, until such time as the order is complied with, vacated, or terminated. The primary emphasis that we discern in this scheme is upon what the operator has done, not on any expressed concern over the particular sequencing of the issuance of various types of withdrawal orders by the Secretary.

The decisions of this Commission and the predecessor Interior Board of Mine Operations Appeals ("Board") evidence consistent precedent that a prior idlement of miners, whether occurring as a result of the issuance of an initial control order or, involuntarily, because of emergency conditions, does not bar miners' entitlement pursuant to a subsequently issued withdrawal order.

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Under the analogous compensation provisions of section 110(a) of the 1969 Coal Act, 30 U.S.C. § 801 et seq. (1976)(amended 1977), shift compensation was awardable for an idlement attributed to an order issued under section 104 of that Act and one-week compensation was available if the idlement was attributed to a section 104(c) withdrawal order issued for an "unwarrantable failure" to comply with a mandatory standard. 30 U.S.C. § 820(a)(1976)(amended 1977). Sections 103(e) & (f) of the 1969 Coal Act, 30 U.S.C. §§ 813(e) & (f)(1976)(amended 1977), were the control order provisions analogous to sections 103(j) & (k) of the Mine Act. In interpreting the meaning and interplay of these 1969 Coal Act provisions, in circumstances analogous to the present case, the Board held:

The miners in the instant case were officially withdrawn by the 103(f) [control] order. However, they were also officially withdrawn by the [subsequent] section 104(c) [unwarrantable failure withdrawal] orders. The language in section 110(a) of the Act allows compensation to miners who are "idled" by a 104(c) order. There is nothing in the language of that section to indicate that compensation for miners will not lie when there are two different orders of withdrawal in effect concurrently. Additionally, that section does not require the 104 order to be the first official one. Sequence ... is not the essence of the applicability of section 110(a).

Roscoe Page v. Valley Camp Coal Co., 6 IBMA 1, 6 (1976)(emphasis added). In addressing similar issues under the 1969 Coal Act, the Commission also adopted the approach that initial control orders and other subsequent compensation-qualifying withdrawal orders operated "concurrently." Peabody Coal Co., etc., 1 FMSHRC 1785, 1790 (November 1979).

In *Loc. U. No. 781, etc. v. Eastern*, supra, a compensation case arising under the Mine Act, the Commission applied the concept of "nexus" to determine the causative relationship between the operation of withdrawal orders and idlements. The Commission stated, "[S]ection 111 compensation is awardable only if there is a nexus between a designated withdrawal order and the miners' idlement ..., or between the underlying reasons for the idlement ... and the reasons for the order." 3 FMSHRC at 1178. The Commission defined "nexus" in terms of a "significantly substantial relationship" between idlement and withdrawal order "to support a section 111 award." *Id.* Rather than establishing an inflexible nexus requirement the Commission specifically recognized the possibility of "more complicated sequences

of events or concurrent operation of causative factors." Id.
(Emphasis added.) The Commission held: "In such cases, we will
examine the relationship between the underlying reasons for the
withdrawal and for the order, and will give balanced consideration
both to the ...

compensatory character of section 111 and to the overall safety purposes of the 1977 Mine Act and section 111 itself." *Id.* The foregoing principles are determinative of the present issue.

In the present case, the initial section 103(j) control order and the subsequent section 107(a) imminent danger withdrawal order each played a particular role with respect to the overall safety concerns of the Mine Act and section 111 and the compensatory character of section 111. From the standpoint of safety, the section 103 order gave the Secretary immediate control of the mine, under the emergency circumstances of the explosion, in order to take whatever actions he deemed necessary in protecting lives and directing rescue and recovery operations. From a compensatory standpoint, that order (as the judge correctly concluded in his first summary decision) initiated whatever compensation was available under the first two sentences of section 111. The section 107(a) order, issued one half-hour later upon a finding of imminent danger, required the operator, for safety reasons, to withdraw the miners from the affected area until the Secretary determined that the imminent danger and its causes no longer existed. For compensation purposes, the imminent danger order initiated the possibility of entitlement under the third sentence of section 111. We find nothing in the statute or in its legislative history to suggest that an existing section 103 order precludes the issuance of a valid and effective section 107(a) order either for purposes of mine safety or compensation entitlement under the third sentence of section 111. 4/

4/ In *Roscoe Page*, *supra*, the Board spoke to similar effect in resolving analogous issues under the 1969 Coal Act:

Section 103(f) [control orders] and 104(c) [withdrawal] orders are designed to achieve different ends. Clearly, by its own language, section 103(f) operates to provide the inspector with emergency powers in the exigencies of a situation wherein there is a mine accident for the purpose of protecting the health and safety of persons in the coal mine. A section 104(c) order, in addition to protecting the health and safety of miners, operates to provide a sanction for a recalcitrant operator's unwarrantable failure to comply with the mandatory standards found in the Act and regulations. Further, a 104(c) order in combination with section 110(a), operates to provide compensation for miners forced to lose work due to this unwarrantable failure. The sequence of 103(f) and 104 orders bears no relationship to the manner in which sections 104 and

110(a) operate together. ... [T]he issuance of a 104(c) order, for purposes of section 110(a)[,] has the effect of officially idling the miners even though, in fact ... they have first withdrawn in compliance with a 103(f) order. Ergo, the miners in this matter were officially "idled" for the purposes of section 110(a) by the 104(c) orders of withdrawal upon their issuance notwithstanding the prior withdrawal required by the 103(f) order.

6 IBMA at 6-7.

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We therefore conclude that the chronological sequence in which the section 103 and 107(a) orders were issued is not determinative of the miners' right to compensation under the third sentence of section 111. In light of the graduated compensation scheme of section 111, imputation of preclusive effect to the initial section 103 control order would effectively frustrate the obvious intent of Congress to provide for expanded one-week compensation beyond the more limited shift compensation available under the first two sentences of the section. Stated otherwise, we believe that Congress did not intend section 103 control orders, usually issued first in time under exigent circumstances, to have compensation-precluding effects. The focus, as stated above, is upon the conduct of the operator and the conditions in the mine, not the sequencing of MSHA enforcement activity.

The record in this matter is clear that the section 107(a) order was issued as the result of a finding of imminent danger, which required that the miners remain withdrawn until the imminent danger and its causes were determined to no longer exist. We agree with the judge that, for compensation entitlement under the first two sentences of section 111, the mine was closed "by" and the miners officially were idled "due to" the section 103(j) order. We conclude, however, that for compensation purposes under the third sentence of section 111, the mine also was closed "by" and the miners also officially were idled "due to" the section 107(a) imminent danger order of withdrawal. In short, the section 103 and 107 orders operated concurrently. We reverse the judge's findings to the contrary.

B. The violation of a mandatory standard

We next address the question of whether, as the judge held, the section 107(a) order itself must allege, or be modified to allege, the violation of a mandatory standard.

The third sentence of section 111 provides that a claim for one-week compensation comes into play when a mine is closed by an order issued under section 104 or section 107 "for a failure of the operator to comply with any mandatory health or safety standards." 30 U.S.C. § 821 (emphasis added). The judge adopted a restrictive interpretation of the term "for", holding that the section 107(a) order as issued, or as subsequently modified prior to its termination, must itself allege the violation of a mandatory standard. On review, the UMWA contends that the language and the legislative history of sections 104(a), 107(a) and 111 permit the necessary allegation of violation of a mandatory standard to be cited under section 104 of the

Mine Act independently from, and subsequent to, the issuance of a section 107(a) order. We agree.

The last sentence of section 107(a) (n.2 supra) expressly states that the issuance of an order under that subsection "shall not preclude the issuance of a citation under section 104...." 30 U.S.C. § 817(a). The legislative history of section 104(a) recognizes that occasions may occur "where a citation will be delayed because of the complexity of

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issues raised by the violations, because of a protracted accident investigation, or for other legitimate reasons." S. Rep. 30, reprinted in Legis. Hist. 618. We note also that, as the key Senate Report points out, the overriding purpose of an imminent danger order is the immediate withdrawal of miners, and that, due to the dangerous conditions giving rise to the order, inspection or investigation of the area to determine the existence of any underlying violations may be delayed necessarily until long after the order was issued or until the imminent danger no longer exists. S. Rep. 38, reprinted in Legis. Hist. 626.

Thus, neither the statute nor the pertinent legislative history requires that for the purpose of one-week compensation the violative conditions causing or underlying the issuance of the section 107(a) order be cited in the order itself or its modification. Although it would have been procedurally possible, once the imminent danger and its causes no longer existed, for the Secretary to have modified the order pursuant to section 107(d), 30 U.S.C. § 817(d), and, upon completion of further investigation, to have cited violations under that modified order, we find no basis to conclude that a separately issued allegation of violation under section 104 is fatally defective in establishing the nexus between the withdrawal order and the violation of a mandatory standard.

We emphasize that section 111 is premised upon a congressional intent to expand rather than contract the compensation that was available under section 110(a) of the 1969 Coal Act. As noted, under the 1969 Coal Act, one-week compensation was available only for an idlement attributable to an unwarrantable failure order. A broader range of orders may trigger the same entitlement under the Mine Act. Further, the Senate Conference report on the bill that became the Mine Act reflects a broad interpretation of the word "for" by describing one-week compensation as being available "in the event the withdrawal order was the result of a failure of the operator to comply with a mandatory health or safety standard...". Conf. Rep. No. 461, 95th Cong., 1st Sess. 59 (1977), reprinted in Legis. Hist. 1337 (emphasis added).

Congress could have chosen words restricting the one-week compensation entitlement in section 111 to a designated order of withdrawal that specifically alleged a violation of a mandatory standard, but there is no indication, in the legislative history or in the final language of the section, that it wished to do so. We reverse the judge's holding that violation of a mandatory standard must be alleged in a section 107(a) order or in a modification of

such order prior to its termination in order to initiate compensation under the third sentence of section 111. 5/

5/ We find Westmoreland's reliance on *Billy F. Hatfield v. Southern Ohio Coal Co.*, 4 IBMA 259 (1975), *aff'd sub nom. District 6, UMWA v. IBMA*, 562 F.2d 1260 (D.C. Cir. 1977), to be misplaced. In *Hatfield*, a

(footnote 5 continued)

C. Violations of standards cited in the section 104(d) orders

Finally, we turn to the question of whether the allegations of violation of mandatory standards contained in the section 104(d) orders issued to Westmoreland could constitute a nexus with the section 107(a) order for compensation purposes. Although conceding that "several of those orders cite Westmoreland for violations which may have contributed to the explosion" (6 FMSHRC at 2198), the judge nevertheless concluded that those allegations of violation could not be linked to the section 107(a) order.

The UMWA contends that it is irrelevant to the question of compensation that the violations of mandatory standards were cited in section 104(d) orders, because the issue here is not the validity of those orders but whether the alleged violations were related to the mine explosion that led to the issuance of the section 107(a) order. Westmoreland notes that all of the orders were vacated and that the underlying violations were resolved in a civil penalty settlement. Westmoreland argues that no causal relationship exists between those violations and the section 107(a) order for purposes of the present proceeding.

We conclude that form in which the violation of a mandatory standard is cited -- whether in a section 104(d) citation or order or in a section 104(a) citation -- is not controlling for compensation purposes. As the judge correctly recognized in his Decision Approving Settlement, the allegations of violation of mandatory standards cited in the orders survived his vacation of the orders themselves. 6 FMSHRC at 1270. As

Footnote 5 end.

case involving a one-week compensation claim under the 1969 Coal Act, the mine had been closed by an imminent danger order of withdrawal issued pursuant to section 104(a) of that Act. 30 U.S.C. § 814(a)(1976) (amended 1977). As already noted, under that statute, only a section 104(c) order of withdrawal for unwarrantable failure could trigger one-week compensation. The UMWA attempted to show that the section 104(a) imminent danger order actually had been based on a condition or practice resulting from the operator's unwarrantable failure to comply with a standard. The court affirmed the decision of the Board that the statute specifically limited one-week compensation to idlements attributable to orders issued pursuant to section 104(c). 562 F.2d at 1263-68. In our view, an important fact distinguishing

Hatfield from the present issue is that in Hatfield the UMWA was attempting to usurp the prosecutory responsibility of the Secretary of the Interior with respect to issuance of a section 104(c) order, by alleging and attempting to prove unwarrantable failure, which could trigger compensation if appropriate. In the present case, the Secretary of Labor, as enforcer of the Act, has issued the requisite section 107(a) order capable of initiating one-week compensation and also has issued the underlying necessary allegations of violation .

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we have indicated, the essential question is one of causality, not procedural format: Was the imminent danger order issued because of underlying conditions involving a violation of mandatory standards? We conclude that the allegations of violation of mandatory standards cited in the vacated section 104(d) orders could provide the causal nexus with the section 107(a) withdrawal order as required for compensation under the third sentence of section 111. The judge's settlement decision states that the violations were alleged in 13 withdrawal orders all issued on July 15, 1982, by an MSHA inspector on the basis of his examination of sworn statements obtained by MSHA investigators in December 1980, and pertain to conditions that the inspector found contributed to the mine explosion of November 7, 1980. 6 FMSHRC at 1269, 1270. In the settlement agreement, Westmoreland paid in full the proposed penalty assessments for five violations, and agreed to pay reduced penalties for the other eight violations. 6 FMSHRC at 1270-1274. Westmoreland's payment of civil penalties for these alleged violations established, for purposes of any proceeding under the Mine Act, that those violations of the Act occurred. See Old Ben Coal Co., 7 FMSHRC 205, 209 (February 1985); Amax Lead Company, 4 FMSHRC 975, 977-80 (June 1982).

Left unresolved, however, is the specific question of whether any of these charges of violation of mandatory standards in fact provide the necessary relationship to the section 107(a) order so as to initiate compensation under the third sentence of section 111. The judge's decision concerning the civil penalty criteria for each of the subsequently alleged violations concludes only that several of the violations may have contributed directly to the mine explosion, while others probably would not have contributed to the cause of the explosion. 6 FMSHRC at 1270-1274.

Because the relationship or nexus between the violations of mandatory standards and the imminent danger order is the critical issue on which statutory entitlement to one-week compensation hinges, we remand to the Commission's Chief Administrative Law Judge for further proceedings by him or by another judge. The assigned judge may reopen the record of this proceeding and take whatever further action is deemed necessary to determine whether any of the conditions involved in the violations of mandatory standards were sufficiently related to the mine explosion and the section 107(a) imminent danger order so as to constitute the required causal nexus. If such a relationship is determined, the judge shall take appropriate action to identify the affected miners and the amount of compensation due to each. 6/

6/ This case does not require us to resolve, and we intimate no views as to, issues concerning the technical requirements necessary for issuance of valid section 104(d) orders.

III.

Conclusion

For the foregoing reasons, the judge's decision is reversed. This matter is remanded to the Chief Judge for proceedings consistent with this decision. 7/

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

7/ Chairman Ford did not participate in the consideration or disposition of this case.

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