

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
PIKEVILLE

CIVIL ACTION NO. 84-244

DISTRICT 30, UNITED MINE  
WORKERS OF AMERICA

PLAINTIFF

VS:

MEMORANDUM OPINION

ENOXY COAL, INC.

DEFENDANT

\* \* \* \* \*

The plaintiff is seeking to vacate the denial of grievance by arbitrator entered April 29, 1984. The plaintiff contends that the denial by arbitrator did not draw its essence from the National Bituminous Coal Wage Argument of 1981 to where the defendant was a signatory. The contract provided:

The production of coal, including removal removal of overburden and coal waste, preparation, processing and cleansing of coal and transportation of coal . . . and work customarily related to all the above shall be performed by classified employees of the employer covered by and in accordance with the terms of this agreement. (Emphasis Added) Art. 1A, §(a).

This agreement also provides for the settlement of disputes between the parties by arbitration and provides the means for such settlement by a grievance procedure.

On January 31, 1984 a grievance was filed by certain employees of defendant charging that in violation of the contract the defendant was allowing "contracters (sic) to haul raw coal out" while the employees were idle and asked to be paid for days in which they did not work.

The defendant is lessee of coal mineral rights. The defendant operates the coal preparation plant with its employees. It also leases

out mine to other operators, who ship their coal mined through defendant's plant. All such sublessees are signatories to the 1981 agreement. One such sublessee was Energy.

One of the seams of coal was narrow, and known as the split coal seam. According to the arbitrator's findings, this coal was highly oxidized, low grade, and had not been marketable; that it had been viewed as waste and customarily used as "fill." Through an arrangement between the defendant and Energy, and without being processed through the preparation plant by the defendant, Energy was permitted to sell this split coal with delivery at the pit. Transportation was made by drivers who were not employees of either defendant or Energy. It is the contention of the plaintiff and the employees that this coal was required to be processed at the preparation plant before shipment and that by such shipments of unprocessed coal the employees were wrongfully idled on the days the coal was hauled away. Also according to the findings of the arbitrator this "split coal" had never been processed at the plant, having been customarily treated as a raw product and used for back fill purposes.

In entering a denial of the grievance, the arbitrator stated:

The instant grievance, . . . , is a complaint by employees of a separate and distinct individual signatory operating against its employer (Enoxy) alleging that such employees have had their contractual rights violated since their employer (Enoxy) has not processed Energy's coal through the pevler preparation plant. In short, the grievants herein do not have the authority or right to require their employer (Enoxy) to compel another employer (Energy) to manage its operation in a certain way relative to processing (or not processing) a certain grade of coal.

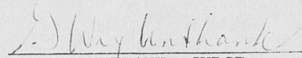
The defendant has filed a motion to dismiss the complaint for failure to state a claim. Since this Court is limited in its review of the arbitrator's decision, the motion to dismiss will be treated as a



motion for summary judgment. In *Steelworkers v. Enterprise Corp*, 363 U.S. 593 (1959) the United States Supreme Court said: ". . . (t)he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction that was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the Courts have no business overruling him because their interpretation of the contract is different from his." *Id* at 599.

Here the plaintiff claims that the defendant violated the terms of the contract which required that preparation, processing and transportation of the coal be done by the classified employees of the defendant. The arbitrator held that since the coal was shipped by coal producer other than the defendant, these grievants being employees of the defendant, had no standing or jurisdiction to require their employer, the defendant, to compel the other employer or coal producer to process the coal through the defendant's plant with the defendant's employees providing the labor therefor. This construction of the provision of the contract goes to the essence thereof and cannot be disturbed by this Court on review. Thus the arbitrator's decision is AFFIRMED.

This the 2nd day of May, 1985.

  
G. WIX UNTHANK, JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
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CIVIL ACTION NO. 84-244

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VS:

SUMMARY JUDGMENT

ENCOY COAL, INC.

DEFENDANT

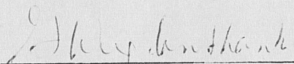
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In accordance with memorandum opinion entered herewith:

It is ORDERED and ADJUDGED:

- (1) That defendant's motion for summary judgment is GRANTED.
- (2) That the decision of the arbitrator is AFFIRMED.
- (3) That the complaint is DISMISSED.
- (4) That this action is STRICKEN from the docket at the costs of the plaintiff.

This the 2<sup>nd</sup> day of May, 1985.

  
G. WIX UNTHANK, JUDGE