UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 84-164

DISTRICT 30, UNITED MINE WORKERS OF AMERICA — PLAINTIFF

VS: **MEMORANDUM OPINION**

ENERGY COAL INCOME PARTNERSHIP 1981-1 — DEFENDANT

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The plaintiff is seeking to have this Court vacate the denial of grievance by the arbitrator. The parties stipulate the facts herein:

1. Energy Coal Income Partnership 1981-1 [Energy] was a signatory to the National Bituminous Coal Wage Agreement of 1981 [1981 Wage Agreement]. (Exhibit A)

2. At all times material hereto, Energy operated a surface coal mine in Martin County, Kentucky, which mine included one-half of a mountain top.

3. Another company, Delta Energy [Delta], which was not signatory to the 1981 Wage Agreement, operated a surface coal mine which included the other one-half of the same mountain top.

4. In conducting its mining operations, Delta deposited the overburden from its mining operations in the same hollow fill as Energy, and Delta employees performed the rough grading of the overburden deposited in the hollow fill by Delta.

5. Energy employees filed a grievance claiming that they were entitled to the work of rough grading the hollow fill deposited by Delta. The grievance stated:

"We are asking to be paid from September for all work performed by non-classified employees for both regular and overtime at contract rate of pay.

We are all qualified ad classified to perform work within our work jurisdiction.

[Signed] Ricky Price, Gary Barker, Terry Prater

[Dated] December 27, 1983"

6. The grievance was submitted to Arbitrator Jon H. Rickey, pursuant to Article XXIII of the 1981 Wage Agreement.

7. On February 17, 1984, Arbitrator Rickey issued his Award denying the grievance.

The Wage Agreement provided:

(a) The production of coal, <u>including removal of overburden</u> and coal waste . . . repair and maintenance work normally performed at the mine site . . . and maintenance of gob piles and mine roads, and work customarily related to all of the above <u>shall be performed by classified Employees</u> of the Employer covered by and in accordance with the terms of this Agreement . . . (Emphasis Added.)

(g) (3) The Employer may not contract out the rough grading in mine reclamation work.

It was the Union's contention before the arbitrator and here that defendant permitted another company, (Delta Energy) to do the rough grading of reclamation work which could not be contracted out under the Wage Agreement. Energy contended that it had no control over Delta's actions in disposition of overburden by Delta from Delta's mining operation.

The arbitrator denied the grievance, holding that the grievants failed to establish a prima facie case of a contractual relationship between Energy and Delta and that there was no evidence to show that Energy violated the Wage Agreement.

The Court has for its consideration cross motions of the parties for summary judgment. If the decision of the arbitrator is drawn from the essence of the contract, a reviewing Court cannot disturb that decision. <u>United Steelworkers of America v. Enterprise Wheel and Car Corporation</u>, 363 U.S. 593, (1960); <u>W. R. Grace and Company v. Local Union 759</u>, 461 U.S. 757 (1983); and <u>United Steelworkers of America v.</u>

Timken Company, 717 F.2d 1008 (6th Cir. 1983). In the Enterprise Wheel and Car Corporation, Supra the 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.

The parties herein having stipulated that both the defendant and Delta deposited overburdens in same hollow and that the Delta employees performed the rough grading of deposited overburden by Delta, it is obvious that the arbitrator correctly determined that the defendant had not violated its contract with the plaintiff as charged in grievance. It was not the defendant's responsibility to rough grade the overburden deposited in the fill by Delta. Rather it was Delta's obligation. It is thus apparent that the arbitrator's construction goes to the essence of the contract and cannot be disturbed by this Court.

This the 1st day of May, 1985.

G. Wix Unthank

G. WIX UNTHANK, JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 84-164

DISTRICT 30, UNITED MINE WORKERS OF AMERICA — PLAINTIFF

VS: — **SUMMARY JUDGMENT**

ENERGY COAL INCOME PARTNERSHIP 1981-1 — DEFENDANT

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In accordance with the memorandum opinion entered herewith:

It is ORDERED and ADJUDGED:

(1) That defendant's motion for summary judgment is GRANTED.

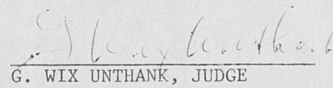
(2) That plaintiff's motion for summary judgment is DENIED.

(3) That the decision of the arbitrator is AFFIRMED.

(4) That the complaint is DISMISSED.

(5) That this action is STRICKEN from the docket at the cost of the plaintiff.

This the 1st day of May, 1985.



G. WIX UNTHANK, JUDGE