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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF LARRY J. HORN,
APPLICANT

Application for Review of Acts
of Discrimination

Docket No. PIKE 79-9

Pontiki No. 1 Mine

v.

PONTIKI COAL CORPORATION,
RESPONDENT

DECISION

Appearances: Thomas P. Piliero, Esq., Office of the Solicitor,
Department of Labor, for Larry J. Horn, Applicant;
William H. Howe, Esq., Loomis, Owen, Fellman &
Coleman, Washington, D.C., for Respondent.

Before: Administrative Law Judge Michels

This is a proceeding under section 105 of the Federal Mine Safety and Health Act of 1977 brought by the Mine Safety and Health Administration (MSHA) on behalf of the Applicant, Larry J. Horn. Mr. Horn has alleged that the Pontiki Coal Corporation, which he has named as Respondent in this proceeding, discriminated against him in connection with a safety dispute at Respondent's Pontiki No. 1 Mine.

On October 24, 1978, MSHA filed an application for temporary reinstatement of Mr. Horn in his employment with Respondent. The application included a finding by MSHA on behalf of the Secretary of Labor that the complaint filed by Mr. Horn alleging discrimination was not frivolously brought. Thereafter, Acting Chief Administrative Law Judge Broderick ordered that the Pontiki Coal Corporation reinstate Mr. Horn to a comparable position at the Pontiki No. 1 Mine at the rate of pay and the same or equivalent work duties assigned him immediately prior to his discharge.

Respondent, in answer to that order, disputed the factual basis of the application, alleged that the case was frivolously brought, and generally took issue with the appropriateness of the reinstatement.

A hearing was held in Prestonsburg, Kentucky, on April 10, 1979, at which both sides were represented by counsel.

At the outset of the hearing, Applicant's counsel advised that the parties had reached a mutually acceptable settlement agreement (Tr. 2). The terms of this agreement were then placed on record:

* * * Both parties agree to mutual exchange and general release of any and all claims whatsoever arising out of Mr. Horn's employment with Pontiki Coal Corporation. Pontiki Coal Corporation agrees to, one, tender the amount of \$14,000, payable to Larry J. Horn on this day, April 10, 1979. Two, to expunge from Mr. Horn's employment record all references to the circumstances surrounding his discharge of May 9, 1978. Three, to tender payment pursuant to the order of temporary reinstatement dated October 26, 1978, in full satisfaction of said order. The tender will be up to and including April 10, 1979.

Larry J. Horn agrees, one, to withdraw his allegation of discrimination and complaint filed with MSHA on June 1, 1978. Two, to authorize the Secretary of Labor to withdraw the complaint of discrimination filed with the Federal Mine Safety and Health Review Commission on January 8, 1979. Three, to authorize the Secretary of Labor to move for the vacation of the order of temporary reinstatement dated October 26, 1978, and four, that he has no further employment rights with Pontiki Coal Corporation.

(Tr. 3). Counsel for both parties advised the court that these terms represent the totality of the settlement agreement (Tr. 3-4).

Thereafter, Mr. Horn was called as a witness and gave the following testimony in response to the court's questioning:

Q. You did hear the terms read, Mr. Horn, and I assume that with your attorney you have discussed this, and I ask you, do you understand fully the terms of this settlement?

A. Yes, Your Honor, I do.

Q. You do understand that you are giving up and will not have employment rights as a result of this settlement -- re-employment rights?

A. Yes, sir, I do.

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Q. You understand that. Do you have any comment, or are you fully satisfied with this settlement?

A. Fully satisfied, sir.

(Tr. 6).

On the basis of the terms of the settlement offered, and on the basis of Mr. Horn's understanding of and agreement with the terms of the agreement, the court approved the settlement.

I find that this settlement is in accord with the remedial purposes of the Federal Mine Safety and Health Act of 1977. Accordingly, I hereby AFFIRM the settlement, as set out above.

As specifically provided for in the settlement, Applicant's counsel then moved for permission to (1) withdraw Mr. Horn's complaint, and (2) for the court to vacate the order of temporary reinstatement. Both motions were granted at the hearing (Tr. 7). I hereby AFFIRM these rulings. Accordingly,

It is ORDERED that the parties, to the extent they have not already done so, comply with the terms of the settlement within 30 days from the date of this decision.

This proceeding is hereby DISMISSED.

Franklin P. Michels
Administrative Law Judge