

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 14, 2020

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

Complainant,

v.

PILOT THOMAS LOGISTICS dba
THOMAS PETROLEUM, LLC,

Respondent.

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. WEST 2020-0214-DM
MSHA Case No. WE MD 20-05

Mine: Goldstrike Mine
Mine ID: 26-01089 (A2612)

ORDER GRANTING TEMPORARY ECONOMIC REINSTATEMENT

Before: Judge Gill

This case involves an Application for Temporary Reinstatement filed by the Secretary of Labor (Secretary) on behalf of complainant, Michael Salvo, against Respondent, Pilot Thomas Logistics dba Thomas Petroleum, LLC, pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(2). On April 8, 2020, the parties submitted a Joint Motion for Temporary Economic Reinstatement that included the individual terms of the settlement.

Pursuant to the terms of the Joint Motion, the parties move for an order that would temporarily, economically reinstate Salvo during the investigation and litigation of the merits of Salvo's February 14, 2020, discrimination complaint by the Mine Safety and Health Administration (MSHA). Specifically, the parties agree that Salvo's temporary reinstatement shall be subject to the following terms and conditions:

- (1) The Secretary asserts that the complaint of discrimination filed by Complainant Michael Salvo under Section 105(c) of the Federal Mine Safety and Health Act of 1977 ("Mine Act") was not frivolously brought.
- (2) Without admitting that Mr. Salvo's complaint was not frivolously brought, Respondent agrees to the entry of an Order of Temporary Economic Reinstatement pending

investigation of the merits of Mr. Salvo's discrimination complaint to the Mine Safety and Health Administration and the completion of any subsequent litigation on a complaint filed by the Secretary of Labor regarding Mr. Salvo's discrimination complaint.

- (3) The parties agree that, due to the distances involved and the need for quick action in this matter electronic signatures or electronically scanned signatures shall be deemed valid.
- (4) Respondent agrees to economically reinstate Mr. Salvo to his position as an equipment/haul truck operator, effective upon the approval of this Settlement and Order Granting Temporary Economic Reinstatement by a Federal Mine Safety and Health Review Commission ("Commission") Administrative Law Judge ("ALJ"). Respondent agrees to pay Mr. Salvo a gross pay of \$1,579.29 per pay period subject to normal deductions.
- (5) Respondent shall provide benefits (including but not limited to retirement plan and seniority accrual) associated with Mr. Salvo's employment, in which he participated or was a beneficiary and consistent with those provided pre-termination except for health insurance. Respondent may deduct all applicable tax withholdings and other withholdings on the same basis as generally required for payment of other benefits pursuant to its policies and practices applicable to other employees.
- (6) The first payment shall be due to Mr. Salvo on Respondent's first regular weekly pay day after the date of approval of this Settlement Agreement by an ALJ. All subsequent payments shall be due on Respondent's regular weekly pay days. All payments shall be made by regular payroll or certified check to "Michael Salvo" and deposited directly into Mr. Salvo's bank account as Respondent did pre-termination.
- (7) Respondent agrees to continue its practice of not providing job references and potential employers will be provided standard dates of employment and job title.
- (8) Mr. Salvo's economic temporary reinstatement shall terminate upon a finding by the Secretary that Section 105(c)(1) of the Mine Act has not been violated, or if the investigation or discrimination proceeding is otherwise discontinued for any reason that is permitted under the Act and its regulations. Alternatively, if the Secretary finds that the discrimination complaint has merit and the Secretary files a Complaint of Discrimination pursuant to Section 105(c)(2) with the Commission, Mr. Salvo's economic temporary reinstatement shall expire only after any decision or other similar order on such Complaint from the Federal Mine Safety and Health Review Commission becomes a final order that is not appealed by the Secretary or Respondent.
- (9) Mr. Salvo understands and agrees that he is not entitled to request or collect any unemployment compensation benefits during the economic temporary reinstatement period.
- (10) The Secretary represents that the terms of this Settlement Agreement and Joint Motion

for Temporary Economic Reinstatement have been conveyed to Mr. Salvo, who has agreed to the terms of the economic temporary reinstatement.

- (11) The parties further agree that by entering into a settlement agreement of the temporary reinstatement proceeding, in which the standard of review is limited, Respondent reserves all rights, including all legal and factual defenses it has to the substantive Section 105(c) complaint, and that none are waived. By agreeing to economic temporary reinstatement of Mr. Salvo, Respondent does not concede in any way the merits of Mr. Salvo's claims and nothing herein shall be construed as an admission of liability by the Respondent. Further this agreement may not be relied upon by either party for any reason other than to enforce its terms during the pendency of the temporary reinstatement order.

I have reviewed the Joint Motion and determined that it reflects a clear meeting of the minds on the issue of temporary economic reinstatement, as required by Commission precedent. I have further determined that the parties' agreement is consistent with the purposes of the Act and Section 110(i) of the Act. Upon consideration of the foregoing, the Joint Motion for Temporary Economic Reinstatement is **GRANTED**.

Accordingly, pursuant to the terms of the parties' agreement, Respondent is **ORDERED** to economically reinstate Michael Salvo, as specified in the Joint Motion, as approved herein. The parties are **FURTHER ORDERED** to comply with all of the individual provisions the parties agreed upon and included in the Joint Motion.

As set forth in the parties' Joint Motion, this Order Granting Temporary Economic Reinstatement is not open-ended. If MSHA determines that there is insufficient evidence to proceed on Salvo's discrimination complaint, this order will terminate on the date of MSHA's determination. *See N. Fork Coal Corp. v. FMSHRC*, 691 F.3d 735, 744-46 (6th Cir. 2012); *Vulcan Constr. Materials, L.P. v. FMSHRC*, 700 F.3d 297, 309 (7th Cir. 2012). Otherwise, it will end upon final order on the underlying discrimination complaint. 30 U.S.C. § 815(c)(2). Therefore, the Secretary must promptly determine whether or not he will file a complaint with the Commission under section 105(c)(2) of the Act and so advise the Respondent and this tribunal.



L. Zane Gill
Administrative Law Judge

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