

CCASE:
MSHA V. ARCH MINERAL COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
June 15, 1979

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

On behalf of John Koerner,
Applicant,

v. Docket No. DENV 78-564

ARCH MINERAL COAL COMPANY,
Respondent.

DECISION

This is a discrimination proceeding under section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C.A. §815(c)(1978). On September 12, 1978, on application of the Secretary of Labor, Acting Chief Judge Broderick issued an order of temporary reinstatement restoring John Koerner, the alleged discriminatee, to his job with Arch Mineral Coal Company. Thereafter the Secretary moved to vacate the temporary reinstatement order on the ground that the parties had negotiated a settlement. Administrative Law Judge Littlefield granted the motion on February 7, 1979. The record did not indicate whether Mr. Koerner agreed to the motion to vacate the reinstatement order.

The Commission directed review on March 9, 1979, to determine whether there were sufficient grounds to grant the motion. The case was remanded for the limited purpose of supplementing the record. The Secretary's submissions on remand indicate that Mr. Koerner was a party to the settlement and authorized the Secretary to move for vacation of the temporary reinstatement order.

The primary concern of the Commission in directing review was to assure that the alleged discriminatee voluntarily agreed to vacating the reinstatement order. It is the miner's rights that are being settled, and we must, therefore, insure that the settlement and vacation of the reinstatement order were agreed to by the miner,

not just the Secretary and the operator.

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The record now shows that Mr. Koerner was a voluntary party to the agreement. Our concern has been satisfied. Accordingly, the February 7, 1979 order of Judge Littlefield is affirmed.