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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,  
ON BEHALF OF PERRY R. BISHOP,  
APPLICANT

Application for Temporary  
Reinstatement

Docket No. KENT 79-161-D

v.

No. 4 Surface Mine

MOUNTAIN TOP FUEL, INC.,  
RESPONDENT

Appearances: Thomas P. Piliero, Esq., Office of the Solicitor, U.S.  
Department of Labor for Applicant  
Herman W. Lester, Esq., Combs and Lester, P.S.C.,  
Pikeville, Kentucky, for Respondent

DECISION AND ORDER

Before: James A. Broderick, Chief Administrative Law Judge

On June 18, 1979, the Applicant filed an application for temporary reinstatement of complainant Perry R. Bishop to the position with Respondent from which he was terminated. The application was supported by a finding of the Secretary that the complaint was not frivolously brought.

On the basis of the Application and the Secretarial finding, I issued an order on June 19, 1979, that Complainant Perry R. Bishop be reinstated to the position from which he was terminated immediately upon receipt of the order by Respondent.

On June 22, 1979, Respondent filed a response to the Secretarial finding and a motion to dismiss the application or to assign the action for immediate hearing. The Response averred that the complaint was frivolously brought.

On June 29, 1979, the case was called for hearing before me in Washington, D. C., pursuant to notice issued on June 25, 1979. The sole issue at the hearing was whether the Secretary's finding that the complaint was not frivolously brought was justified.

Respondent renewed its motion to dismiss and after hearing argument, I denied the motion.

David Childers and Larry Adkins testified on behalf of Respondent. Perry R. Bishop testified on behalf of Applicant. Charles O. Webb, a special investigator for the Mine Safety and Health Administration, was called as a rebuttal witness for Respondent.

Much of the testimony on behalf of both Respondent and Applicant was concerned with the merits of the case, i.e., whether complainant's discharge was justified or was the result of activity protected under the Act. The term "frivolous" is defined as: "1. Unworthy of serious attention; insignificant; trivial . . . . 2. Marked by flippancy; silly or gay . . . ."(FOOTNOTE 1) There is no evidence in the record which would support a finding that the complaint here was frivolous in any of the meanings of that term.

I therefore upheld from the bench the Secretary's finding that the complaint was not frivolously brought, and I hereby confirm that finding.

On the basis of the testimony at the hearing and the contentions of the parties, I issued an order from the bench renewing my order of temporary reinstatement and I confirm that order herein.

Respondent is hereby ORDERED to temporarily reinstate Perry R. Bishop effective June 22, 1979, to the position from which he was terminated or to a comparable position at the same rate of pay and with the same or equivalent work duties as were assigned to him immediately prior to his termination.

This order shall remain in effect pending further order of the Commission or Commission Administrative Law Judge in this case.

James A. Broderick  
Chief Administrative Law Judge

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FOOTNOTES START HERE

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1 The American Heritage Dictionary of the English Language (New College ed. 1969), 528.