

CCASE:

STEVE SHAPIRO V. BISHOP COAL & SOL V. CONSOLIDATION

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TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

STEVE SHAPIRO,
COMPLAINANT

Complaint of Discharge,
Discrimination and Interference

v.

Docket No. WEVA 79-238-D

BISHOP COAL COMPANY,
RESPONDENT

Docket No. WEVA 79-445-D

Bishop No. 34 Mine

SECRETARY OF LABOR,
ON BEHALF OF STEVE SHAPIRO,
COMPLAINANT

v.

CONSOLIDATION COAL COMPANY
(BISHOP COAL COMPANY),
RESPONDENT

DECISIONS APPROVING SETTLEMENT

Appearances: Barbara K. Kaufmann and Kenneth Stein, Esqs.,
Office of the Regional Solicitor, U.S. Department
of Labor, Philadelphia, Pennsylvania, for the
Complainants; Kendrick King, UMWA, District
#29, Beckley, West Virginia, for complainant
Steve Shapiro; Samuel P. Skeen, Esq., Pittsburgh,
Pennsylvania, for the respondent

Before: Judge Koutras

Statement of the Proceedings

These consolidated proceedings concern discrimination complaints filed by the complainants against the respondent pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. A hearing was conducted in Charleston, West Virginia during the term October 23-24, 1979, to commence again at a time and place convenient to the parties. Subsequently, complainant MSHA advised me by letter dated January 18, 1980, that the parties had reached a settlement in the cases and that a motion to withdraw the complaints would be forthcoming for my review and consideration.

By motion filed February 7, 1980, MSHA moves to withdraw its discrimination complaint on the ground that the parties have agreed to settle the matter and that the terms of the agreement finalizing the settlement are satisfactory to all concerned, including Mr. Shapiro, and that both the operator and Mr. Shapiro have signed and executed the settlement agreement, a copy of which as been submitted for the record.

Under the terms of the agreement respondent agrees that it will not discharge or in any manner discriminate against or interfere with any miner, representative of miners, or applicants for employment subject to the Act because of their engaging in activities protected by the Act or in the exercise of any rights granted to them under the Act, including the making of health or safety complaints to the respondent or to MSHA or the filing of charges with MSHA. Further, respondent agrees to immediately post on the mine bulletin board, or in a conspicuous place where notices to employees are customarily posted and maintained for a period of 60 consecutive days from the date of posting, the notice setting forth the terms of the settlement agreement between the respondent and Mr. Shapiro.

Discussion

Commission Rule 30, 29 CFR 2700.30, requires Commission approval for proposed civil penalty cases which have been contested but subsequently settled. Although the instant cases are complaints of discrimination filed pursuant to section 105(c)(2), MSHA's claims for relief included a proposal for assessment of an appropriate civil penalty in the event it prevailed on its discrimination claim. Accordingly, I believe that any proposed settlement in cases of this kind require a Judge's approval pursuant to rule 30. See, Secretary of Labor (MSHA) and John Koerner v. Arch Mineral Coal Company, DENV 78-564, March 9, 1979, a discrimination case decided by now retired Judge Littlefield on February 7, 1979. Judge Littlefield approved a settlement entered into by the parties on the ground that "the parties have successfully negotiated a settlement on all matters formally in issue", and he vacated a reinstatement order previously entered in the case. On review, the Commission remanded the case to the Judge in order to supplement the record with (1) the terms of the settlement and (2) to document the fact that the employee agreed to or otherwise acquiesced in the negotiated settlement. Further, in a recent case decided by Judge Steffey on January 8, 1980, MSHA and James Blevins, et al., v. Cedar Creek Coal Corporation, VA 79-55-D, he approved a discrimination case settlement and permitted withdrawal of the complaint on the basis of his findings that all of the affected miners signed the agreement and that it reflected a reasonable resolution of all issues presented in the proceedings.

Conclusion

After full consideration of the record adduced in these proceedings, including the transcripts of the testimony presented by the witnesses who testified in the two-day hearing session of October 23 and 24, 1979, and the settlement agreement entered into by the parties, I conclude that the proposed disposition of these proceedings is in the public interest and should be approved. It seems clear to me that both Mr. Shapiro and the respondent are satisfied with the agreed upon disposition of the complaints

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which were filed in these proceedings, and that the Secretary is in accord with the agreement. Accordingly, pursuant to 29 CFR 2700.30, the settlement is approved, and MSHA's motion to withdraw and dismiss is granted.

Order

Respondent is ordered to comply forthwith with the terms of the settlement as set forth above and to post the notice of the agreement as agreed. Upon compliance, these proceedings are dismissed.

George A. Koutras
Administrative Law Judge