

CCASE:
JOHN WILSON & RONALD RUMMEL V. LAUREL SHAFT
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

JOHN WILSON AND RONALD RUMMEL,
APPLICANTS

Complaint of Discrimination

Docket No. PITT 72-23

v.

LAUREL SHAFT CONSTRUCTION COMPANY,
INC.,

RESPONDENT

DECISION AND ORDER

On April 19, 1972, a decision was issued in the subject proceeding, finding that Respondent had illegally discharged Applicants in violation of section 110(a) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq. Respondent was ordered: (1) to offer each Applicant reinstatement with the seniority, status, classification, pay and work shift that he would have held and enjoyed had Respondent not discharged him; (2) to pay each Applicant full back wages, with interest at 6 percent per annum for lost wages he would have received in the Respondent's employment from the discharge until the date he (a) was reinstated pursuant to an offer of reinstatement or (b) refused to accept such offer of reinstatement; (3) to deduct from such award of back pay "any wages which such Applicant received from other employment in the period for which back wages are due from the Respondent under this Order"; and (4) to pay to Applicants an aggregate amount for all costs and expenses, including attorney's fees, which have been reasonably incurred by Applicants for, or in connection with, the institution and prosecution of this proceeding.

It affirmatively appears from the record that, on February 9, 1973, Respondent offered each Applicant an opportunity to be reinstated and to report for work on February 15, 1973. Neither Applicant appeared for work on the specified date or notified Respondent of his refusal to accept the offer of reinstatement.

On March 27, 1973, the parties stipulated that Applicant John Wilson was entitled to \$3,873.17 in back wages and other damages, including interest at 6 percent per annum, that Ronald Rummel was entitled to \$6,239.14 in back wages and other damages, including interest at 6 percent per annum, and that both Applicants incurred costs and expenses in the amount of \$824.85 and attorney's fees in the amount of \$2,750.00.

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The parties also stipulated that, in the period in which damages accrued Applicant John Wilson received \$352.00 for 16 weeks as unemployment compensation benefits from the Commonwealth of Pennsylvania, Bureau of Employment Security, and that Applicant Ronald Rummel received \$2,674.00 for 42 weeks as unemployment compensation benefits from the Commonwealth of Pennsylvania, Bureau of Employment Security.

Respondent contends that the unemployment compensation benefits received by Applicants should be deducted from the total amount of back pay and other benefits that Applicants would have received had they not been discharged. Respondent argues that unemployment compensation benefits are "wages which each Applicant received from other employment" and, therefore, should be deducted from the final award of back pay as required by the Decision and Order of April 19, 1972.

In *N.L.R.B. v. Gullet Gin Company, Inc.*, 340 U.S. 361, 364 (1951), the Supreme Court upheld the Board's decision in refusing to deduct unemployment compensation benefits from an award of back pay. The Court followed an earlier decision in which the Court held that state unemployment compensation benefits were not "earnings" to be deducted from back pay. See *N.L.R.B. v. Marshall Field & Co.*, 318 U.S. 253, 255 (1943).

I conclude that unemployment compensation benefits are not "earnings" to be deducted from a final award of back pay within the meaning of the Federal Coal Mine Safety and Health Act and my Decision and Order of April 19, 1972.

WHEREFORE IT IS ORDERED that:

(1) Within 30 days of this Decision, Laurel Shaft Construction Company shall pay John Wilson as back wages and other damages, including interest in the amount of 6 percent per annum until March 27, 1973, the total amount of \$3,873.17. Interest on such amount shall not accrue after the date of the parties' stipulation of damages, viz., March 27, 1973.

(2) Within 30 days of this Decision, Laurel Shaft Construction Company shall pay Ronald Rummel as back wages and other damages, including interest in the amount of 6 percent per annum until March 27, 1973, the total amount of \$6,239.14. Interest on such amount shall not accrue after the date of the parties' stipulation of damages, viz., March 27, 1973.

(3) Respondent shall pay both Applicants costs and expenses in the amount of \$824.85 and attorney's fees in the amount of \$2,750.00, within 30 days of this decision. Interest shall not be due on this amount.

WILLIAM FAUVER
JUDGE

