

CCASE:
SOL (MSHA) V. ISLAND CREEK & LANGLEY & MORGAN
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF LARRY D. LONG,
APPLICANT

Complaint of Discrimination

Docket No. VA 79-81-D

v.

ISLAND CREEK COAL COMPANY
AND

LANGLEY & MORGAN CORPORATION,
RESPONDENTS

DECISION AND ORDER

On June 19, 1980, a decision was issued in the subject proceeding, finding that Respondents violated section 105(c) of the Federal Mine Safety and Health Act of 1977 (1) by reassigning Applicant to outfit an explosives truck on November 1, 1978, and (2) by reassigning Applicant to miscellaneous work outside his work classification on November 14, 1978.

On July 10, 1980, the Secretary filed a proposed order for relief, requesting that Island Creek Coal Company be assessed a penalty of \$3,500 for each of the two violations, for a total of \$7,000, and that Langley & Morgan Corporation be assessed a penalty of \$2,000 for each of the two violations, for a total of \$4,000.

The Secretary proposed that Larry D. Long be awarded costs and expenses reasonably incurred for, or in connection with, the institution and prosecution of the subject proceeding in the following amounts: \$1,709.85 for 154 hours of lost time from work; \$137.70 for mileage; and \$61.44 in telephone calls.

The Secretary also requests that Respondents be ordered to cease and desist from discriminating against or interfering with Larry D. Long because of activities protected under section 105(c) of the Act; and that Respondents be ordered to post the Decision and Order in this proceeding at the Virginia Pocahontas No. 5 and No. 6 Mines.

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On July 17, 1980, Respondents filed an objection to the proposed penalties as excessive and requested a hearing to determine the reasonableness of the costs and expenses in Applicant's proposed order for relief. A hearing was held on August 7, 1980.

At the hearing, Applicant modified his claim for costs and expenses to \$543.75 by reducing the claim for lost wages to \$287.04 for time lost to attend the hearings on December 4, 1979, on August 7, 1980, and to confer with his attorney on August 6, 1980; by increasing the mileage expense to \$199.24; and by reducing the telephone expenses to \$57.47. Counsel for Applicant explained that the amounts originally claimed differed from those claimed at the hearing on August 7, 1980, because Applicant did not have the documentary evidence to verify the claims before August 6, 1980. Counsel for Applicant determined that most of the 154 hours originally claimed as lost time "could not be characterized as expenses which were incurred in the pursuit of this case."

Respondents contend that Applicant may not recover "costs and expenses" under section 105(c)(3) for voluntary loss of time from work while attending the hearings on December 4, 1979, on August 7, 1980, and for consulting his attorney on August 6, 1980. Respondents contend that, even if Applicant can recover for time lost from work while attending the hearing on December 4, 1980, he is not entitled to recover for time lost on August 6-7, 1980. Respondents argue that had Applicant's original demand for costs and expenses been reasonable and had Respondents known that Applicant was going to reduce his claim for 154 hours of lost time from work, Respondents would not have raised an objection in the first place and no hearing would have been required on August 7, 1980. In no case, Respondents argue, is Applicant entitled to costs and expenses for the time he spent conferring with his attorney on August 6, 1980. Respondents also argue that had there been no hearing on August 7, 1980, Applicant's mileage expense would have remained at \$137.70.

Section 105(c) of the Act provides in part:

Whenever an order is issued sustaining the complainant's charges under this subsection, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commission to have been reasonably incurred by the miner, applicant for employment or representative of miners for, or in connection with, the institution and prosecution of such proceedings shall be assessed against the person committing such violation.

The drafters of the Act intended that the complaining miner receive "all relief that is necessary to make him whole and to remove the deleterious effects of the discriminatory conduct including, but not limited to reinstatement with full seniority rights, back pay with interest, and recompense for any special damages sustained as a result of the discrimination. The specific relief is only illustrative." S. Rep. No. 95-181, 95th

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(1977), reprinted in LEGISLATIVE HISTORY OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977 at 625 (1978).

I find that Applicant is entitled to compensation for (1) lost wages in the amount of \$247.04; (2) mileage expenses in the amount of \$199.24; and (3) telephone expenses in the amount of \$57.47. I find that these costs and expenses were reasonably incurred by Applicant for, or in connection with, the institution and prosecution of the subject proceeding.

Based upon the statutory criteria for assessing a civil penalty under the Federal and Mine Safety and Health Act of 1977, Island Creek Coal Company is assessed a penalty of \$3,500 for each of its violations found herein and Langley & Morgan Corporation is assessed a penalty of \$2,000 for each of its violations found herein.

I find that Respondents should be ordered to cease and desist from discriminating against or interfering with Applicant because of activities protected under section 105(c) of the Act.

I also find that each Respondent should be ordered to post the prior Decision and this Decision and Order on the mine bulletin board, or in such other conspicuous place, where notices for the miners are posted at the Virginia Pocahontas No. 5 and No. 6 Mines.

WHEREFORE IT IS ORDERED that:

(1) Island Creek Coal Company shall pay the Secretary of Labor the above-assessed civil penalties, in the total amount of \$7,000, within 30 days from the date of this Decision.

(2) Langley & Morgan Corporation shall pay the Secretary of Labor the above-assessed civil penalties, in the total amount of \$4,000, within 30 days from the date of this Decision.

(3) Respondents are jointly and severally liable to Larry D. Long for the costs and expenses found above, in the total amount of \$543.75, together with interest at the rate of 10 percent per annum accruing from August 7, 1980, until paid, and shall pay such sum and interest to Larry D. Long within 30 days of this Decision.

(4) Respondents shall cease and desist from discriminating against or interfering with Applicant because of activities protected under section 105(c) of the Act.

(5) Respondents shall post a copy of the Decision of June 19, 1980, and a copy of this Decision and Order on the mine bulletin board, or at such other conspicuous place where notices are normally posted for the employees, at the Virginia Pocahontas No. 5 and No. 6 Mines, and keep such copies so

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posted unobstructed and protected from the weather for a consecutive period of at least 60 days.

WILLIAM FAUVER
JUDGE