

CCASE:

SOL (MSHA) V. MULLIN CREEK COAL

DDATE:

19801010

TTEXT:

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

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
ON BEHALF OF BOBBY D. SMITH,  
COMPLAINANTS

Complaint of Discrimination

Docket No. KENT 80-102-D

No. 1 Mine

v.

MULLIN CREEK COAL CO., INC.,  
AND KENNETH STANLEY,  
INDIVIDUALLY,  
RESPONDENTS

DECISION

Appearances: William F. Taylor, Attorney, U.S. Department of Labor,  
Nashville, Tennessee, for the Complainants Charles  
Lowe, Attorney, Pikeville, Kentucky, for the Respondents

Before: Judge Koutras

Statement of the Case

This is a discrimination proceeding initiated by the Secretary against the respondents pursuant to section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, charging the respondents with unlawful discrimination against complainant Bobby Smith for exercising certain rights afforded him under the Act. Mr. Smith was discharged by the respondent on October 22, 1979, but was subsequently reinstated on December 18, 1979, by Order of Chief Judge Broderick pending final adjudication of his complaint.

Respondent filed a timely answer denying the allegations of discrimination, and pursuant to notice, a hearing was convened at Pikeville, Kentucky, during the term September 9-10, 1980, and the parties appeared and participated fully therein.

### Discussion

The hearing record adduced in this case reflects that complainant Smith has been regularly employed at the mine since his reinstatement on December 18, 1979, that he is considered a good employee by mine management, and that he presently enjoys a good working relationship at the mine with mine management (Tr. 204). Further, the record reflects that Mr. Stanley is no longer employed by the respondent mining company, and the Secretary conceded that the testimony and evidence adduced during the course of the hearing in support of the complaint does not support a finding that Mr. Stanley discriminated against Mr. Smith (Tr. 200). Accordingly, counsel agreed that Mr. Stanley should be dismissed as an individual party-respondent and he was dismissed from the case from the bench.

At the conclusion of the Secretary's case, respondent's motion to dismiss the complaint was denied. Shortly after the initiation of respondent's defense, the parties requested a bench conference for the purpose of proposing a settlement of the case. Pursuant to an agreement by the parties, including Mr. Smith, the settlement agreed to is as follows (Tr. 272-274):

1. Mr. Smith will be permanently reinstated to his position which he has reoccupied since his temporary reinstatement on December 18, 1979.
2. Mr. Smith will be paid \$1,000 by the respondent as compensation for his back wages during the period that he was off the payroll.

In view of the proposed settlement of the matter, the complainants, including Mr. Smith, requested leave to withdraw the complaint and that I dismiss the case (Tr. 273).

### Conclusion

After full consideration of the record adduced in this proceeding, including the transcript of the testimony presented by the witnesses who testified at the two-day hearing session of September 9 and 10, 1980, and the settlement agreement entered into by the parties, I conclude that the settlement disposition of this dispute is a reasonable and fair resolution of the matter and that approval of same is in the public interest. It seems clear to me that both Mr. Smith and the respondent are satisfied with the settlement disposition of this case, and the Secretary is in accord with the agreement.

### ORDER

In view of the foregoing, the proposed settlement disposition of this matter is APPROVED, and the complainants' motion to withdraw and dismiss the complaints are GRANTED.

George A. Koutras

Administrative Law Judge