

CCASE:
JACKIE HAMMONDS V. NATIONAL MINES
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

JACKIE RAY HAMMONDS,

APPLICANT

Complaint of Discrimination

Docket No. KENT 79-345-D

v.

No. 33 Mine

NATIONAL MINES CORPORATION,

RESPONDENT

FINAL ORDER

On October 31, 1980, Applicant filed a Statement of Non-Satisfaction of Order, stating that Respondent has not complied with the decision and order issued on September 15, 1980.

On August 14, 1980, a decision was issued in the subject proceeding holding Respondent in default. On September 15, 1980, a decision was issued, incorporating the allegations of the complaint as findings of fact. The decision issued on September 15, 1980, found that Respondent discriminated against Applicant by suspending Applicant on November 7, 1978, and discharging Applicant on November 9, 1978.

On November 17, 1980, Applicant filed a proposed final order. Respondent has filed no response to the proposed order.

CONSIDERING THE RECORD AS A WHOLE, IT IS HEREBY ORDERED that:

1. Respondent shall offer Applicant, by certified mail, reinstatement in Respondent's employment to the same position, or one equivalent to the position, which he held on November 7, 1978, with the seniority, status, classification, pay and work shift that he would have held and enjoyed had Respondent not terminated his employment as found in the decision of September 15, 1980. Such offer of reinstatement shall specify the time and place at which reinstatement shall be made effective, if accepted by Applicant, and such date shall not be sooner than 7 days nor greater than 10 days from the date the offer is delivered to Applicant. If Applicant accepts reinstatement, Respondent shall provide Applicant with necessary and adequate training or retraining to perform the duties of the position to which he is assigned.

2. Respondent shall pay to Applicant back wages and interest at a rate of 10 percent per annum: (A) in the amount of \$32,305.21, which have accrued

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from the date of discharge through September 26, 1980; and (B) such additional amounts as have accrued or shall accrue after September 26, 1980, and until Applicant is reinstated or, if Applicant fails to accept the offer of reinstatement provided in paragraph 1, above, until the date Respondent specifies (in the offer of reinstatement) that Applicant may return to work.

3. Respondent is entitled to deduct from back wages due Applicant under paragraph 2, above, any wages which Applicant received from other employment in the period for which back wages have accrued or shall accrue. Unemployment compensation shall not be deductible.

4. Respondent shall pay to Applicant attorney's fees: (A) in the amount of \$7,369, which have accrued through September 26, 1980, which amount is hereby found to be reasonable for such period; and (B) such additional attorney's fees reasonably incurred thereafter for, or in connection with, the continued prosecution of proceedings until the satisfaction of this order.

5. Respondent shall pay to Applicant costs and expenses: (A) in the amount of \$187.49, which have accrued through September 26, 1980, which amount is hereby found to be reasonable for such period; and (B) such additional costs and expenses reasonably incurred thereafter for, or in connection with, the continued prosecution of proceedings until the satisfaction of this order.

6. Respondent shall expunge from Applicant's employment records all records of and references to the unlawful suspension on November 7, 1978, and the unlawful discharge on November 9, 1978.

7. Respondent shall forthwith post: A copy of the decision of August 14, 1980, a copy of the decision and order of September 15, 1980, and a copy of this order on the mine bulletin board, or at such other conspicuous place where notices are normally posted for employees, at the No. 33 Mine, and keep such copies so posted, unobstructed and protected from the weather for a consecutive period of at least 60 days.

WILLIAM FAUVER
JUDGE