

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

JUL 13 1981

SECRETARY OF LABOR, : Complaint of Discrimination  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. WEVA 81-174-D  
ON BEHALF OF CHARLES BOOTHE, :  
Complainants :  
  
v. :  
CEDAR COAL COMPANY, :  
Respondent :

DECISION AND ORDER APPROVING SETTLEMENT

Statement of the Case

This is a discrimination proceeding filed by the complainants against the respondent pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, for an alleged act of discrimination which purportedly occurred sometime between November 1, 1978 and June 30, 1980. The matter was originally scheduled for hearing on May 5, 1981, in Charleston, West Virginia, but the hearing was continued at the request of the parties so that a proposed settlement could be submitted for my consideration.

On June 17, 1981, the Secretary filed a motion to withdraw the complaint of discrimination together with the proposed settlement agreement, the terms of which are as follows:

1. Complainant will withdraw his complaint, HOPE CD 80-57, **filed** under § 105(c) of the Federal Mine Safety and Health Act of 1977, with prejudice to a complaint related to the matters contained therein being refiled.
2. Complainant authorizes the Secretary of Labor to seek a dismissal with prejudice of the complaint pending as Docket WEVA 81-174 before the Federal Mine Safety and Health Review Commission. That dismissal with prejudice will be reflected on the basis of this voluntary settlement of all matters among the parties.
3. Upon notification that the complaint in Docket No. WEVA 81-174 has been dismissed with prejudice, Cedar will post for a total period of three (3) consecutive

weeks the Notice, which has been prepared and agreed to by **Boothe**, counsel for the Department of Labor, Cedar and counsel for Cedar. Provided, however, that such posting period shall begin on the day of effect of a new collective bargaining agreement applicable to Cedar's operations, on Cedar's receiving notice of the dismissal of Docket No. WEVA 81-174, with prejudice, whichever date is later.

#### Discussion

The aforementioned notice was filed by the Solicitor on July 6, 1981. This notice indicates that complainant was awarded a job bid which had been the subject of a grievance matter filed jointly with this discrimination complaint. As complainant now has received the job, he has chosen to withdraw his complaint.

The notice also states that there has been and will be no judicial determination as to whether or not there has been any discrimination by Cedar Coal Company. It also indicates the company policy of not condoning any discriminatory practices by its management or supervisory personnel.

#### Conclusion

After full consideration of the proposed settlement and the attached notice, I conclude that the settlement disposition of this dispute is a reasonable and fair resolution of the matter and that its approval would be in the public interest. It seems clear that both Mr. **Boothe** 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 motion to withdraw the complaint of discrimination is GRANTED.

  
George A. Koutras  
Administrative Law Judge

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