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SOL (MSHA) v. EMERY MINING
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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 GORDON S. BENNETT, JAMIE V. COX, STEVEN R. FRITSCH, JAMES E. JOHNSON, WILLIAM R. JOHNSON, ROBERT C. JOLLEY, JAMES OLSEN, PAUL REDHAIR, LANSING L. SMITH, MICHAEL C. TATUM, FRED L. TUBBS, AND ROBERT R. WILSON, COMPLAINANTS v. EMERY MINING CORPORATION, RESPONDENT	COMPLAINT OF DISCRIMINATION DOCKET NO. WEST 80-489-D(A) MINE: Deseret Mine

Appearances: James H. Barkley, Esq., Office of Henry C. Mahlman, Associate Regional Solicitor, United States Department of Labor Denver, Colorado 80294, For the Complainants
Todd D. Peterson Esq.
Crowell & Moring
Washington, D.C. 20036, For the Respondent

Before: Judge John J. Morris

DECISION
STATEMENT OF THE CASE

The Secretary of Labor of the United States, the individual charged with the statutory duty of enforcing the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (the Act) brings this action on behalf of complainants. He asserts Emery Mining Corporation, (Emery), violated Section 115(b) of the Act. Further, the Secretary claims that the aforesaid violation constitutes discriminatory conduct under Section 105 (c)(1) of the Act.

Section 115 of the Act, now codified at 30 U.S.C. 825(a) provides, in part, as follows:

MANDATORY HEALTH AND SAFETY TRAINING

Sec. 115. (a) Each operator of a coal or other mine shall have a health and safety training program which shall be approved by the Secretary ....

> (1) new miners having no underground mining experience shall receive no less than 40 hours of training if they are to work underground. Such training shall include instructions in the statutory rights of miners and their representatives under the Act, use of the self-rescue device and use of respiratory devices, hazard recognition, escapeways, walk around training, emergency procedures, basic ventilation, basic roof control, electrical hazards, first aid, and the health and safety aspects of the task to which he will be assigned;
>
> (b) Any health and safety training provided under subsection (a) shall be provided during normal working hours. Miners shall be paid at their normal rate of compensation while they take such training, and new miners shall be paid at their starting wage rate when they take the new miner training. If such training shall be given at a location other than the normal place of work, miners shall also be compensated for the additional costs they may incur in attending such training sessions.
>
> (c) Upon completion of each training program, each operator shall certify, on a form approved by the Secretary, that the miner has received the specified training in each subject area of the approved health and safety training plan. A certificate for each miner shall be maintained by the operator, and shall be available for inspection at the mine site, and a copy thereof shall be given to each miner at the completion of such training. When a miner leaves the operator's employ, he shall be entitled to a copy of his health and safety training certificates. False certification by an operator that training was given shall be punishable under section 110(a) and (f); and each health and safety training certificate shall indicate on its face, in bold letters, printed in a conspicuous manner the fact that such false certification is so punishable.
>
> (d) The Secretary shall promulgate appropriate standards for safety and health training for coal or other mine construction workers.

Section 105(c)(1) of the Act, the discrimination section, now codified at 30 U.S.C. 815(c)(1) provides as follows:

> 105(c)(1) No person shall discharge or in any manner discriminate against or cause to be discharged or cause

discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject

> to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this Act.

After notice to the parties, a hearing on the merits was held in Salt Lake City, Utah on March 17, 1981. The parties filed post trial briefs.

ISSUES

The initial issue is whether Emery's requirement that a job applicant have 32 hours of miner training as a precondition of employment violates Section 115, the training section of the Act. If the first issue is answered in the affirmative, does such a violation trigger a violation of Section 105(c)(1), the discrimination section of the Act. If a violation of both sections occurred, what relief is appropriate particularily since the Secretary in his complaint did not seek a civil penalty.

For the reasons herein stated I conclude that Emery's policy violates the Act, constitutes discriminatory practice, and I further assess a civil penalty.

SYNOPOSIS OF THE CLAIMS

Complainants, all inexperienced in mining, sought employment with Emery. Before considering any applications Emery's personnel policy requires that all job applicants complete 32 hours of training at an MSHA approved miner's training course. The applicants at their expense successfully completed the training courses. Their references were checked by Emery, and after physical examinations they were hired.

The Secretary contends that Emery's policy violates Section 115(b) of the Act. On behalf of complainants he seeks to recoup all expenses attendant to their taking the training course as well as pay not received while they were attending the course.

FINDINGS OF FACT

The facts are uncontroverted.

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1. Jamie V. Cox initially contacted Emery for employment. Emery personnel told him to contact Job Service.(FOOTNOTE.1) At that agency he was advised to take 32 hours of miner training. Cox took the training and applied at Emery. His references were good and he was hired by Emery on January 28, 1980, as a buggy driver (underground). Cox received an additional 8 hours of miner training from Emery.

Cox's expenses consisted of the following:

Tuition for 32 hour course	$ 100.00
Miles travelled to attend course (256 miles at 18 1/2›)(FOOTNOTE.2)	47.36
Pay not received ($65.78 x 4 days)	263.12

Cox had no prior underground mining experience (Tr. 29-39, 78).

2. James Olsen contacted Emery personnel. He was referred to Job Service and took the MSA 32 hour training course. His starting pay as a miner was $65.78 per day.

Olsen started with Emery on March 21, 1980, operating a shuttle car underground. After he was hired Olsen received 8 hours training from Emery.

Olsen's expenses were as follows:

Tuition at MSA	$100.00
(Mileage, 480 @ 18 1/2›)	88.80
Pay not received ($65.78 x 4)	263.12

Olsen had no prior mining experience (Tr. 40-44).

3. When Paul Redhair contacted Emery's personnel secretary he was told he needed 32 hours of training to work underground. Redhair took the training course and after returning to Job Service he was interviewed by Emery. He was hired on February 1, 1980, as an underground worker.

Redhair's expenses were as follows:

Tuition for training	$100.00
Pay not received ($65.78 x 4)	263.12

Redhair had no prior mining experience.

4. James E. Johnson contacted Job Service who directed him to the safety training course. After completing the course he returned to Emery where he received an additional 8 hours of training.

Johnson's expenses were as follows:

Tuition for miner training at MSA	$100.00
Meals during training	36.00
Motel cost per night ($36 x 4)	144.00
Mileage (168 x 18 1/2›)	31.08
Pay not received ($65.78 x 4)	263.12
Helmet	11.00
Boots	65.00
Belt	13.00

The record does not reflect that the helmet, boots, and belt were required by Emery as a precondition of employment. Accordingly, I conclude that he should not recover for the expense of such items.

Johnson was employed as an underground miner on February 22, 1980. He had no prior mining experience (Tr. 51-53).

5. William R. Johnson was told by Job Service that employment would be more easily obtained if he had miner's training. Johnson took the 32 hour course and returned to Job Service. He was then referred to Emery, took a physical examination, and was hired on February 22, 1980. Johnson's first job was as an underground trainee laborer.

William R. Johnson's expenses were as follows:

Tuition for training	$100.00
Motel cost ($36 x 4)	144.00
Mileage (160 @ 18 1/2›)	29.60
Pay not received ($65.78 x 4)	263.12
Meals	36.00

William R. Johnson had no prior mining experience (Tr. 54-56).

6. Fred L. Tubbs went to Job Service where he was told he needed miner training. He took the course, went back to Job Service, then to Emery. At Emery he was interviewed and took a physical examination.

Fred L. Tubbs' expenses were as follows:

Tuition for training	$100.00
Mileage (124 x 4 x 18 1/2›)	91.76
Lunches during course	8.50
Pay not received ($65.78 x 4)	263.12

Tubbs was employed by Emery on February 8, 1980 as an underground miner. He had no prior mining experience (Tr. 56-60).

7. Lansing L. Smith was told by Emery that he would have to take the 32 hour training course. Emery stated that after completing the course he would be hired. Smith took the training course at Snow College in Utah.

Smith's expenses were as follows:

Tuition for training classes	$ 65.00
Mileage (100 miles x 4 days x 18 1/2›)	74.00
Pay not received ($65.78 x 4)	263.12

Smith started with Emery on February 22, 1980 as an underground miner. He had no prior experience (Tr. 61-67).

8. Robert T. Wilson went to Emery and saw the Emery sign referring applicants to Job Service. Wilson was told by Emery's assistant personnel director that it would speed the hiring process if he took the course. He took the 8 hour per day course for four days.

Wilson's expenses were as follows:

Tuition for training course	$ 54.00
Pay not received ($68 x 4)	272.00

9. The parties stipulated that four complainants were out of town and unavailable for the hearing. It was further agreed that Emery did not compensate said complainants for the time they spent obtaining pre-employment training. The complainants subject to this stipulation were Gordon S. Bennett, Steven R. Fritsch, Robert C. Jolley, and Michael C. Tatum (Tr. 5-6). (If the parties intended a stipulation greater in scope they did not express it on the record.)

Based on the stipulation I enter the following findings of fact:

Complainants Bennett, Fritsch, Jolley, and Tatum did not receive their pay for the four days they spent attending the miner training course. The amount of the pay not received was as follows:

Gordon S. Bennett	$65.78 (starting pay)	x 4 days	$263.12
Steven R. Fritsch	$65.78 x 4		263.12
Robert C. Jolley	$65.78 x 4		263.12
Michael C. Tatum	$65.78 x 4		263.12

10. Prior to the 1977 Act Emery hired new miners and sent them to the College of Eastern Utah. The new miners were given an additional two days training at Emery's facilities (Tr. 80).

11. During 1979 Emery experienced a 48% turnover in inexperienced miners; 450 were hired and 190 terminated in the first 3 months (Tr. 81-82).

12. On January 1, 1980 Emery changed its policy. The new policy was that no person would be hired unless he had completed a new miner orientation program through an MSHA approved institution (Tr. 82).

13. The reason for Emery's change in personnel policy was to screen out those persons who weren't interested in a mining career and thereby reduce the turnover rate (Tr. 89, 96).

14. The turnover rate was reduced to 25% from 50% but Emery did not identify the cause of the reduction (Tr. 86, 89, 90).

15. Before January 1, 1980 Emery paid the miners for their time in taking the training course (Tr. 88).

16. The State of Utah was the prime mover for the training program. Its purpose was to reduce turnover (Tr. 92, 93).

DISCUSSION

Emery contends it may impose legimate pre-employment qualifications on those who wish to be employed at its mines. I agree. However, the legitimacy of Emery's policies depends on whether a pre-employment requirement of 32 hours of miner's training conflicts with a contrary Congressional directive. Accordingly, it is necessary to look to the terms of the Act and, if necessary, its legislative history.

Various portions of the Act dealing with miner training are profuse in indicating a Congressional intent that miner training is the responsibility of the operator and not the job applicant.

A review of Section 115(a) indicates such a Congressional intent. An overview of the section shows: "Each operator shall have a health and safety training program. ..." [30 U.S.C. 825(a)]. New miners having no underground mining experience shall receive no less than 40 hours of training [30 U.S.C. 825(i)] which "shall be provided during normal working hours [30 U.S.C. 825(b)]. In the instant case the applicants who took the course did so on their own time and not during any such normal working hours. Section 115(b) also directs that "miners shall be paid at their normal rate of compensation while they take such training and new miners shall be paid at their "starting wage" when they take the new miner training. If such training is given at a location other than the normal place of work miners shall also "be compensated for the additional costs they may incur in attending such training sessions." [30 U.S.C. 115(b)].

None of the above conditions were met in the instant factual situation. The applicants did not receive any compensation, a starting wage or otherwise, for their 32 hours training course. In fact they paid their own tuition, and they incurred additional incidental costs for which they were not reimbursed.

Section 115(c) directs that upon completion of each training course "the operator" shall certify that the miner has received the training [30 U.S.C. 115(c)]. The certificate shall be maintained "by the operator" .... False certification "by an operator" is punishable under both the civil and criminal penalty provisions of the Act. [30 U.S.C. 825(c)]. (Emphasis added.)

As indicated above the Act places the responsibility for the training of miners on the operator. On the other hand, no portion of the Act places the responsibility for training costs on new miners. Emery's pre-employment condition clearly shifts the statutory burden from Emery, the operator, to the job applicants. Although operators may enter into cooperative training agreements (30 C.F.R. 48.4), they ultimately are responsible for the cost and content of such training.

In addition to the foregoing language in the statute, the legislative history supports this construction. The Committee on Human Resources in May, 1977 stated:

> It is not the Committee's contemplation that the Secretary be in the business of training miners. This is clearly the responsibility of the operator, as long as such training meets the Act's minimum requirements. Sen. Rep. No. 95-181, 95th Cong., 1st Sess., 50 (1977), reprinted in Legislative History of the Federal Mine Safety and Health Act of 1977, 95th Congress, 2nd Session, 638, (July, 1978).

Further, the general tenor of Senate Report No. 95-461, 95th Cong., 1st Sess., 61 (1977), reprinted in Leg. History, supra at 1339, clearly illustrates the Congressional intent. A particularily relevent portion of this legislative history reads as follows:

MANDATORY HEALTH AND SAFETY
TRAINING AND MINE RESCUE TEAMS

> The Senate bill contained a provision requiring the Secretary to, within 180 days of the effective date of this, promulgate regulations with respect to the safety and health training of miners. Each operator would have a safety and health training plan, approved by the Secretary, which would provide new underground miners with no less than 40 hours of training, new surface miners with no less than 24 hours of training, and all miners with at least 8 hours of annual retraining. Any miner reassigned to a new task would be provided with training in safety and health aspects of his new assignment. Safety and health training would be

provided at the expense of the

> operator(FOOTNOTE.3) and during normal working hours. Miners would be paid their normal rate of compensation for such time spent in training, and new miners would be paid their starting wage rate. If such training was given away from the mine, miners would also be compensated for their expense.
>
> Other portions of the legislative history amply support the construction stated here.

The next issue is whether the violation constitutes a discriminatory practice under Section 105(c) of the Act. The discrimination section is broad in scope and it includes and prohibits discrimination against an "applicant for employment." In David Pasula v. Consolidation Coal Company 2 FMSHRC 2786 (1980) (Reversed on other grounds, United States Court of Appeals, (3rd Cir), October 30, 1981, No. 80-2600), the Commission cited the report of the Senate Committee that largely drafted the 1977 Mine Act. The Commission citing in part the legislative history at 624, stated as follows:

> The wording of section 10[5](c) is broader than the counterpart language in section 110 of the Coal Act and the Committee intends section 10[5](c) to be construed expansively to assure that miners will not be inhibited in any way in exercising any rights afforded by the legislation.
>
> The Committee also intends to cover within the ambit of this protection any discrimination against a miner which is the result of the safety training provisions ... or the enforcement of those provisions.... (Emphasis added).

Since 115(b) imposes the statutory obligation on the operator to provide and pay for miner training it follows as a necessary corollary that the right to training as a miner is one of the statutory rights protected by the discrimination portion of the Act. Emery's pre-employment policy which denied this right to the complainants, therefore, discriminates against job applicants.

The Committee was cognizant of the possibility of pre-employment training in areas other than as a pre-employment condition. The Legislative History, supra, page 639 recognizes West Virginia and Kentucky safety training courses and discusses their ramifications:

> The Committee recognizes that some States, namely West Virginia and Kentucky, provide pre-employment

> training to individuals who may apply for jobs as miners. Such training may meet the requirements of the standards promulgated by the Secretary, and, assuming that such training is of sufficient quality, the operator should not be required to duplicate State-provided training.

In the above circumstances there is a Congressional intent to relieve the operator from the liability of providing duplicate training for a job applicant. Emery has not cited any portion of the legislative history that would cause me to conclude that there are other circumstances where Congress intended to shift the burden from the mine operator.

The doctrine expressed in Consolidated Coal Company, (David Pasula), supra does not purport to set the outside perimeters of protected activity. In this case complainants were "applicants for employment." Further, the protected activity here is a statutory right to training provided for in the Act. Emery accordingly discriminated against complainants by requiring them to secure on their time and at their expense such training.

The Secretary's regulations, Title 30 Code of Federal Regulations, Part 48, relating to the training and retraining of miners, does not address the issues raised in this case.

EMERY'S CONTENTIONS

Emery argues that it may impose legitmate pre-employment qualifications, further that such a policy is consistent with the Act, and that there would be no practical benefit in requiring Emery to pay for all 40 hours of training since it may well continue its present personnel policy that is the subject of this litigation.

Emery's initial argument has already been discussed. To briefly restate the holding: Emery's pre-employment qualification fails since it is in conflict with the statutory provisions of the Act.

Emery's second argument is that its policy is consistent with the Act because the complainants were not "miners." Emery relies on Section 115(b) of the Act. With particular emphasis Emery cites the pay requirement section as follows:

> Any health and safety training provided under subsection (a) shall be provided during normal working hours. Miners shall be paid at their normal rate of compensation while they take such training, and new miners shall be paid at their starting wage rate when they take the new miner training. If such training shall be given at a location other than the normal place of work, miners shall also be compensated for the additional cost they may incur in attending such training sessions. (Emphasis added).

Further, Emery cites Section 3(g) of the Act which states:

> (g) "miner" means an individual working in a coal or other mine.

In short, Emery asserts that the job applicants here were not "miners" since they had not been hired and most of them had not even submitted formal applications for employment. I find from the uncontroverted evidence that the factual statements made by Emery are credible, but I disagree with Emery's restrictive construction of the term "miner". Such a view conflicts with the Act and its legislative history which places the burden for the training of all miners on the mine operator. Further, it is an accepted principal of law that remedial legislation is to be broadly construed. Consolidated Coal Company, 1 FMSHRC 1300, 1309 (1979).

It is apparent from the legislative history Leg. History, supra at (pages 589-598) that Congress was exceedingly disturbed over mine disasters and resulting deaths. The history reviews the Sunshine Silver Mine Disaster (Idaho, 1972; 91 fatalities); Buffalo Creek (1972, 125 fatalities); Blackville disaster (July 1972, 9 fatalities); Scotia, (March 1976, 26 fatalities including 3 inspectors); near Tower City, Pennsylvania (February 1977, 9 fatalities). Further, the history states:

> It is unacceptable that years after enactment of these mine safety laws, miners can still go into the mines without even rudimentary training in safety. Leg. History, supra at 592.

Emery's final argument is that if it is required to pay for all 40 hours of training it is unlikely that the miners will ultimately benefit from this additional burden placed on Emery. Its argument is to the effect that it could hire only "experienced miners", further, it could train the applicants at its facilities, and it could still require its job applicants to have completed 32 hours of training before it gives its own 40 hours of training.

I agree with Emery that it may restrict its hiring practices and hire only "experienced miners", as defined in 30 C.F.R. 48.2(b). In addition, Emery may use its present facilities to give the required 40 hours of training. In fact, prior to the adoption of the present Act Emery (then American Coal Company) had a full MSHA approved training course on its site. Further, it compensated new miners for their expenses and wages while they took the course (Tr. 6, 80, Exhibit C-1).

As I interpret Emery's final argument it focuses on the proposition that it may require inexperienced miners to take 32 hours of preliminary training and then give its own 40 hours of training (a total of 72 hours). There should be many avenues Emery can explore in its efforts to reduce labor turnover but its hypothetical presents a factual situation very similar to the pre-employment condition that I have ruled invalid in the instant

case. However, in view of the fact that Emery's argument is hypothetical no definitive ruling is required in this decision.

Emery further claims that in Section 105(c) Congress used the term "applicants for employment" but that term does not appear in Section 115(b). Therefore, Emery concludes that Congress did not intend to require operators to compensate applicants for training they received prior to becoming hired by Emery.

No one contends Emery should train each and every job applicant but it may not discriminate against job applicants.

In Section 115(a) Congress is discussing "new miners" with no underground experience, 115(a)(1); new miners with no surface experience 115(a)(2); refresher training for all miners, 115(a)(3); any miner reassigned to a new task, 115(a)(4). It would be incongruous for Congress to require training for a "applicant for employment." If Congress had perceived the thrust of Emery's argument and required training for "applicants for employment" (in addition to new miners) then Emery might find itself in the miner training business which could be quite apart from the coal mining business.

Emery is correct in its contention that "applicants for employment" are not required to be trained at the expense of the mine operator. However, Congress mandated that mine operators bear the full expense of training new miners. Emery's policy that applicants for employment obtain 32 hours of training before they may be considered for employment circumvents this mandate. Emery constructed its employment policy in such a way that it remained responsible for only eight of the forty hours of training required for new underground miners. This policy clearly violates Section 115 of the Act.

Having considered all of the arguments herein on the uncontroverted facts I conclude that an order should be entered in favor of complainants granting the relief they seek.

PROCEDURAL MATTERS

At the hearing of the above case counsel for the Secretary indicated that he had been informed that there were approximately 300 employees in addition to complainants that were hired by Emery after its policy went into effect on January 1, 1980 (Tr. 22-28). The parties discussed the possibility of joining other similarily situated employees once they were specificially identified. The undersigned indicated that an amended complaint would be favorably considered and jurisdiction would be retained over those complainants who were added in the amended complaint. Subsequently leave was granted to the Secretary to file an amended complaint which adds 127 complainants. They seek reimbursement for tuition, back wages, and incidental expenses.

After the amended complaint was filed the undersigned, pursuant to Rule 21, FRCP, severed the amended complaint from the original complaint. It was further ordered that the instant case retain its present style and that the letter (A) be designated after the docket number.

The caption of the case involving the allegations raised in the amended petition was designed as follows:

SECRETARY OF LABOR, MINE SAFETY
AND HEALTH ADMINISTRATION (MSHA),
on behalf of MARK ADAMS, ET AL, DOCKET NO. WEST 80-489-D(B)
Complainant
v.

EMERY MINING CORPORATION,
Respondent

Further, a copy of the complete file in WEST 80-489-D(A) was transferred to WEST 80-489-D(B). The latter case remains pending before the undersigned.

CIVIL PENALTY

In this case the Secretary did not seek a civil penalty against Emery for the violation of Section 105(c) of the Act.

The credible evidence has been reviewed and the complaints of discrimination are affirmed. The Act provides that any violation of the discrimination section shall be subject to the provisions of Section 108 and 110(a).

The statute further authorizes the imposition of a penalty not to exceed $10,000. (30 U.S.C. 818, 820(g), (i)). The Secretary did not seek a civil penalty in this case but the statute mandates the imposition of a penalty. Accordingly, a penalty of $1,000 is assessed against respondent for violating the Act. (Cf Tazco, Inc, Va. 80-121 (August 1981)).

Based on the foregoing findings of fact and conclusions of law as stated above I enter the following:

ORDER

1. Complainants Gordon S. Bennett, Jamie V. Cox, Steven R. Fritsch, James E. Johnson, William R. Johnson, Robert C. Jolley, James Olsen, Paul Redhair, Lansing L. Smith, Michael C. Tatum, Robert R. Wilson and Fred L. Tubbs were unlawfully discriminated against in violation of Section 105(c) of the Act, and their complaints of discrimination are sustained.

2. Respondent is ordered to pay to each complainant the amount indicated after said complainant's name:

		TOTAL
Gordon S. Bennett		
Back pay	$263.12	$263.12

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Jamie V. Cox		
Tuition	$100.00	
Mileage	47.36	
Back pay	263.12	$410.48
James Olsen		
Tuition	$100.00	
Mileag e	88.80	
Back pay	263.12	$451.92
Steven R. Fritsch		
Back pay	$263.12	$263.12
Paul Redhair		
Tuition	$100.00	
Back pay	263.12	$363.12
Lansing L. Smith		
Tuition	$ 65.00	
Mileage	74.00	
Back pay	263.12	$402.12
Robert R. Wilson		
Tuition	$ 54.00	
Back pay	272.00	$326.00
Fred L. Tubbs		
Tuition	$100.00	
Mileage	91.76	
Meals	8.50	
Back pay	263.12	$463.38
Michael C. Tatum		
Back pay	$263.12	$263.12
James E. Johnson		
Tuition	$100.00	
Incidental costs (meals & motel)	180.00	
Mileage	31.08	
Back pay	263.12	$574.20
William R. Johnson		
Tuition	$100.00	
Motel costs	144.00	
Mileage	29.60	
Back pay	263.12	
Meals	36.00	$572.72
Robert C. Jolley		
Back pay	$263.12	$263.12

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3. Respondent is to pay interest on all said back pay awards at the rate of 12 1/2% per annum.(FOOTNOTE.4)

4. A civil penalty of $1,000 is assessed against respondent for violating Section 105(c) of the Act.

John J. Morris
Administrative Law Judge

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~FOOTNOTE_ONE

The parties stipulated that Job Service is an agency of the State of Utah Department of Employment Security (Tr. 34).

~FOOTNOTE_TWO

The undersigned has calculated all mileage expense on the basis of mileage paid by the United States Government for government use of privately owned vehicles at the time of the use.

~FOOTNOTE_THREE

Portion cited in MSHA brief.

~FOOTNOTE_FOUR

Interest rate used by Internal Revenue Service for underpayments and overpayments of tax, Rev Ruling 79-366 Cf. Florida Steel Corporation, 231 N.L.R.B. No. 117, 1977-78, CCH, N.L.R.B. Para 18,484; Bradley v. Belva Coal Company, WEVA 80-708-D, April 1981.