

CCASE:  
SOL (MSHA) V. MULLIN COAL  
DDATE:  
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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  
CLYDE JR. SMITH,  
JAMES R. CLEVINGER,  
MONROE MULLINS,  
DAVID MAY,  
JERRY LEE SMITH,  
JOHN R. TELFER, JR.,  
JAMES THACKER,  
H. K. TILLEY, JR.,  
AND THOMAS V. WALKER,  
COMPLAINANTS  
v.

Complaint of Discharge,  
Discrimination, or Interference  
Docket No. KENT 81-17-D  
No. 1 Mine

MULLIN CREEK COAL COMPANY,  
INC.,  
RESPONDENT

ORDER GRANTING REQUEST FOR EXTENSION OF TIME

Counsel for complainants filed on May 15, 1981, in the above-entitled proceeding a letter requesting that the time for compiling back-pay data for complainants in this proceeding be extended from the date of May 22, 1981, to July 6, 1981. As grounds for granting the motion, complainants' counsel states that the special investigator who was working on the case has been attending a training program in Beckley, West Virginia, for several weeks and has been unable to devote any time toward the compilation of the back wages involved.

In the order accompanying the bench decision mailed to the parties on March 17, 1981, I provided in paragraph (E) that the time for compiling the data required for computing the back pay due complainants under my bench decision would expire on May 22, 1981, unless an extension of time was found to be required. Under the Commission's rules, 29 C.F.R. || 2700.8(b) and 2700.10(b), respondent has a period of 15 days within which to file an answer to complainants' motion for an extension of time. Inasmuch as the date of May 22 will come before the 15-day period for filing a reply has expired, I shall act upon the motion at this time. If respondent's counsel files an answer in opposition to the granting of the extension of time, I shall modify this order, if necessary, to consider any objections which may be raised by respondent in opposition to the grant of the request for extension of time.

It was obvious at the hearing that complainants have not kept precise records as to the dates of their employment or the amounts paid. I would assume that the investigator will have to check with the employers of those complainants who have held

other jobs in order to determine the precise amounts that they received from such employers. As to those complainants who have not worked any place since their discharge by respondent, it does not appear that much work would be necessary to determine the amount of their back pay. The extension requested is approximately 6 weeks and it may well take 6 weeks to interview all the complainants and obtain the required

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facts. Therefore, I shall grant the extension at this time, pending receipt from respondent's counsel of any facts which may warrant a reduction in the time required for obtaining the necessary back-pay data.

The official file now contains the filings by respondent's counsel seeking to obtain review of my bench decision. The provision in the order accompanying my bench decision for reconvening of the hearing was granted in response to the request for a further hearing made by respondent's counsel. I should make it clear at this time that if respondent's counsel is able to agree with complainants' counsel as to the amount of back pay due to each of the complainants, I am willing to accept such a stipulation. A stipulation would avoid the necessity of holding a further hearing. If the amount of back pay could be provided to me without the need for holding a further hearing, I would be willing to insert the back-pay amounts for each complainant in my bench decision and issue it in final form within a very short time after I have received the necessary information from the parties.

If the procedure set forth in the preceding paragraph could be followed, respondent could file its petition for discretionary review immediately upon receipt of my final decision. I am suggesting the above-described procedure for the parties' consideration. If a further hearing is desired by the parties, I shall be glad to hold it at a date which is agreeable with the parties so long as such date does not conflict with my own calendar of hearings or the availability of a hearing room.

WHEREFORE, for the reasons given above, it is ordered:

The request for an extension of time to and including July 6, 1981, within which to compile the back-pay data required by paragraph (E) of the order accompanying my bench decision is granted and the time is extended to July 6, 1981.

Richard C. Steffey  
Administrative Law Judge  
(Phone: 703-756-6225)