

CCASE:
VICTOR McCOY V. CRESCENT COAL
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19820511
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

VICTOR MCCOY,
COMPLAINANT
v.
CRESCENT COAL COMPANY,
CRESCENT INDUSTRIES,
INTERNATIONAL MINERALS AND
CHEMICALS CORPORATION (IMC),
RESPONDENTS

Complaint of Discharge,
Discrimination, or Interference

Docket No. PIKE 77-71

ORDER APPROVING SETTLEMENT AGREEMENT

On September 28, 1981, I issued a decision in this proceeding in which I found that Complainant was discharged by Respondent on April 22, 1977, in violation of section 110(b) of the Coal Mine Safety Act of 1969. I ordered that Respondent Crescent Coal Company offer Complainant reinstatement in the position from which he was discharged; that Respondent pay him back pay with interest thereon from the date of discharge until he is offered reinstatement; and that Respondent Crescent pay a reasonable attorney's fee for services rendered by counsel for Complainant.

Pursuant to notice, a hearing was called on May 4, 1982, in Pikeville, Kentucky, for the purpose of receiving evidence on the issues of the amount of Complainant's entitlement to back pay and attorneys fees.

After the commencement of the hearing, the parties agreed to settle Complainant's claims and stated their agreement on the record as follows:

1. Respondents agree not to seek review of my decision of September 28, 1981, on the merits of the Complainant.
2. Reinstatement will not be provided or offered Complainant.
3. Respondents shall pay to Complainant Victor McCoy the sum of \$55,000 in full settlement of his claim for back wages and interest resulting from his discharge on April 22, 1977.

4. Respondents shall pay to Complainant and his attorneys the sum of \$45,000 in full settlement of their claim for reimbursement of attorneys fees and expenses of litigation in this proceeding.

5. The rights of Respondents among themselves as to the amounts due hereunder are not determined by this order.

The agreement was explained to Complainant on the record and he expressed his understanding of it, and his agreement to its terms. Having duly considered the matter, I conclude that the agreement is in the best interest of Complainant and serves the purposes of the Act.

Therefore, IT IS ORDERED that the settlement agreement is APPROVED. IT IS FURTHER ORDERED

1. that Complainant has no right to reinstatement, under paragraph 1 of my order of September 28, 1981, or otherwise.

2. Within 40 days of the date of this order, Respondent shall pay the sum of \$55,000 to Complainant as back wages and interest due under paragraph 2 of my order of September 28, 1981.

3. Within 40 days of the date of this order, Respondent shall pay the sum of \$45,000 to Complainant and his attorneys as attorneys fees and expenses due under paragraph 3 of my order of September 28, 1981.

4. Upon payments of the amounts recited in paragraphs numbered 2 and 3 above, Complainant will have no further claim under the Coal Mine Safety Act of 1969 against Respondents arising out of his discharge on April 22, 1977.

5. The rights of Respondents as among themselves are not determined by this order.

James A. Broderick
Administrative Law Judge