

CCASE:
ROGER HALL V. B & B MINING
DDATE:
19830114
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

ROGER L. HALL,		Complaint of Discharge,
	COMPLAINANT	Discrimination, or Interference
v.		Docket No. VA 79-128-D
		VA 80-170-D
B & B MINING, INC.,		
	RESPONDENT	

DECISION APPROVING SETTLEMENT

This proceeding involves two complaints of discharge, discrimination, or interference filed by Roger L. Hall against B & B Mining, Inc., pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977. The complaint filed in Docket No. VA 79-128-D alleges that respondent discharged Hall on or about June 4, 1979, in violation of section 105(c)(1) of the Act. Respondent alleges that it discharged Hall because he missed 2 or more days of work without obtaining permission to be absent, whereas Hall contends that he was discharged because he requested that the Mine Safety and Health Administration conduct a special inspection of respondent's mine. Hall requested an immediate arbitration hearing with respect to his discharge of June 4, 1979, and, as a result of that hearing, Hall was reinstated to his prior position and awarded back pay.

The complaint filed by Hall in Docket No. VA 80-170-D alleges that respondent again discharged him on or about April 7, 1980, in violation of section 105(c)(1) of the Act. Hall claims that respondent's mine was closed for 1 week and 2 days. When the miners were called back to work, Hall alleges that he asked that the mine be inspected before the miners returned to work. The primary reason for requesting the inspection related to Hall's claim that respondent was using 12-inch roof bolts which had been falsely labeled as 36-inch bolts. Management denied Hall's request. Hall then asked for 2 days of personal leave which, Hall says, were granted. Hall then claims that when he returned to work, he was discharged. Respondent's answer to the complaint in Docket No. VA 80-170-D alleges that Hall was discharged for illegal picketing activities.

These cases were first assigned to Administrative Law Judge James A. Laurenson who convened a hearing in Abingdon, Virginia, on November 5, 1980, to consider the issues raised by the complaints. At the hearing, counsel for respondent stated that respondent had filed a petition in bankruptcy on February 21, 1980, and that the filing of a bankruptcy action automatically stays all proceedings against a corporation until a party has obtained permission from the bankruptcy court to proceed. Judge Laurenson ruled at the hearing that he was required by the provisions of 11 U.S.C. 362 to continue the cases until counsel for complaint had obtained permission from the bankruptcy court

to proceed.

Subsequently, the counsel who had represented respondent at the hearing on November 5, 1980, withdrew as counsel in this proceeding because a dispute among respondent's stockholders had created a conflict of interest which made it improper for him to represent respondent in this proceeding.

Judge Laurenson rescheduled a hearing after permission to proceed had been obtained from the bankruptcy court, but that hearing had to be canceled because of budgetary constraints. Judge Laurenson again scheduled the cases for hearing, but that hearing also had to be canceled when Judge Laurenson became one of the judges who were subject to a reduction in force.

The cases were thereafter reassigned to me and I issued a prehearing order on February 12, 1982, requesting that the parties provide answers to basic factual and procedural questions by March 12, 1982, but the time for answering had to be extended so that respondent's newly assigned counsel could obtain records from the former counsel who had withdrawn. Thereafter, additional extensions of time had to be granted because complainant's counsel was forced to undergo surgery for a serious back problem which involved a long period of post-operative recuperation.

The cases were finally scheduled for hearing on January 11, 1983, in Abingdon, Virginia. Before a formal hearing had begun, I asked counsel for the parties if they had discussed settlement. Complainant's counsel stated that he had not tried to settle the cases with the lawyer who was now representing respondent, but that he had tried unsuccessfully to settle the cases with respondent's former attorney. Counsel for respondent indicated that he was quite willing to discuss settlement. Therefore, the parties were given an opportunity to discuss settlement. Shortly thereafter, counsel for complainant advised me that the parties had reached a settlement agreement under which respondent had agreed to pay complainant an amount of \$1,300 with respect to the complaint filed in Docket No. VA 79-128-D and an amount of \$700 with respect to the complaint filed in Docket No. 80-170-D, or a total of \$2,000 for both cases, including attorney's fees.

I find that the settlement agreement should be approved. Complainant had obtained a job with another employer after his second discharge and there was not a long period for which back pay could have been required even if a hearing had been held on the merits and an outcome favorable to complainant had resulted. Additionally, in view of the fact that respondent is now involved in formal bankruptcy proceedings, the usual relief of reinstatement of complainant to his former position would not be possible.

WHEREFORE, for the reasons hereinbefore given it is ordered:

(A) The parties' settlement agreement is approved.

(B) Within 30 days from the date of this decision, the complaint filed in Docket No. VA 79-128-D shall be considered

satisfied and dismissed upon payment by respondent of \$1,300.00
to complainant and the complaint in Docket

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No. VA 80-170-D shall be considered satisfied and dismissed upon payment by respondent of \$700.00 to complainant. The total payment of \$2,000.00 includes allowance for attorney's fees.

Richard C. Steffey
Administrative Law Judge