

CCASE:  
PATRICIA V. EMERY MINING  
DDATE:  
19830926  
TTEXT:

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

PATRICIA SWENSEN,  
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. WEST 82-105-D  
DENV CD 82-9

EMERY MINING CORPORATION,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Vail

This proceeding involves a complaint of discrimination by Patricia Swensen (hereinafter "Swensen") against Emery Mining Corporation (hereinafter "Emery") pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977. The complainant alleges that Emery is guilty of discrimination in not disciplining an employee accused of sexually harassing her and requests payment of six days of lost pay and travel expenses for 600 miles incurred as a consequence of this occurrence. Emery filed an answer denying any acts of discrimination against Swensen. This case was scheduled by proper notice for hearing, in conjunction with another case, on August 23, 1983, in Price Utah.

At the commencement of the hearing, James T. Jensen entered formal appearance as counsel for Emery and advised me that Swensen had retained W. Brent Wilcox of Salt Lake City, Utah as her counsel. Neither Swensen nor her attorney appeared at the hearing. Jensen stated that he had received a letter dated June 17, 1983 (Ex. R-2) from Wilcox advising him that Wilcox represented Swensen and requesting Emery compensate Swensen for five days lost wages. Jensen wrote a letter to Wilcox dated August 19, 1983 (Ex. R-1) agreeing to pay the five days of compensation in full settlement of the compensation claim. Jensen reported that he received a telephone call in the evening of August 22, 1983, the day prior to the date of the hearing, advising him that Swensen had agreed to accept the proposal set forth in Jensen's letter of August 19.

At the hearing, in view of the fact that neither attorney had entered a prior appearance in the record in this case, nor was Swensen present in the courtroom to confirm the agreement, I continued the matter and advised the parties to submit a settlement agreement for my approval.

On September 14, 1983, I received a joint motion by the parties for an order of dismissal with prejudice of this case supported by a release and settlement agreement dated August 31, 1983. The settlement amount is in the sum of \$469.84.

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WHEREFORE, for the reasons herein before given it is ordered:

(A) The parties settlement agreement is approved.

(B) The complaint of discrimination in this case is hereby dismissed with prejudice.

Virgil E. Vail  
Administrative Law Judge