

CCASE:  
(UMWA) ETC. V. PEABODY COAL & SOL (MSHA)  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

UNITED MINE WORKERS OF  
AMERICA (UMWA),  
ON BEHALF OF  
JAMES ROWE, ET AL.

DISCRIMINATION PROCEEDINGS

Docket No. KENT 82-103-D  
MADI CD 81-23

DELMAR SHEPARD,

Docket No. KENT 82-104-D  
MADI CD 82-01

JERRY D. MOORE,

Docket No. KENT 82-105-D  
MADI CD 82-05

LARRY D. KESSINGER,

Docket No. KENT 82-106-D  
MADI CD 82-04

JAMES RUSSELL,

Docket No. LAKE 82-83-D  
VINC CD 81-23

HOWARD COGNION,  
COMPLAINANTS

Docket No. LAKE 82-84-D  
VINC CD 81-26

v.

Eastern Division Operations

PEABODY COAL COMPANY,  
RESPONDENT

AND  
SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
ON BEHALF OF  
THOMAS L. WILLIAMS,  
COMPLAINANT

Docket No. LAKE 83-69-D  
VINC CD 83-04

v.

Eastern Division Operations

PEABODY COAL COMPANY,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Kennedy

The captioned individual and class action discrimination  
complaints charge the operator with violating section 105(c)(2)

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and (3) of the Mine Safety Law by establishing a policy that required miners in a layoff status to pay for their training or retraining as a condition of maintaining their position of seniority on the layoff panels. Under pressure from MSHA, this policy, which was promulgated in June 1981, was rescinded in April 1983. The parties then attempted to negotiate a settlement. When this failed, the matter came on for a prehearing/settlement conference on August 4, 1983. As a result of that conference, the parties (1) divided the claimants into three categories: Rehires (Category I), Bypassed (Category II), and Not Rehired (Category III); (2) agreed to file a stipulation to settle the claims under Category I; and (3) to negotiate further with respect to settling the other two categories.

At a status hearing on October 13, 1983, the last details of the stipulation for settlement of Category I were worked out. When no settlement for Categories II and III could be achieved the parties agreed to waive an evidentiary hearing and to submit the issue of liability only for determination on the basis of a joint stipulation of material facts not in dispute together with cross motions for summary decision.

A related proceeding, recently reassigned from Judge Fauver, involves a discrimination complaint brought, somewhat belatedly, by the Secretary on behalf of a Category II miner. Secretary of Labor on Behalf of Thomas L. Williams v. Peabody Coal Company, LAKE 83-69-D. I understand the Solicitor will endeavor to join the stipulation of facts filed by the UMWA and Peabody in the retained proceedings so that the Williams case can be decided at the same time the retained cases are determined.

These matters are now before me on the parties Joint Motion to Approve Settlement and to Dismiss with prejudice three of the captioned matters which involve only Category I and the John Does falling in Category I in the class action Docket No. KENT 82-103-D.

While these matters were pending, the Commission decided Secretary and UMWA v. Emery Mining Company, 5 FMSHRC 1391 (1983), appeal pending in the Tenth Circuit. There the Commission held that under section 115 of the Mine Safety Law an operator can require applicants to take new miner training as a precondition of their employment but, if that training is used to satisfy the requirement for training new hires, the operator must reimburse new miners for the costs previously incurred. Emery's refusal to reimburse the new miners was held an unlawful interference with rights guaranteed new hires (but not applicants) under the anti-discrimination provisions of section 105(c)(1) of the Act.

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Earlier, Judge Broderick held that Peabody could require that as a condition of rehire a laid-off surface miner must pay for the training needed to obtain a certificate of training as an experienced underground miner. *UMWA v. Peabody*, 4 FMSHRC 1338 (1982).

As indicated, the stipulation for settlement presently before me involves only miners who were laid off and then recalled without compensation for the training they paid for in order to comply with the condition for recall established by Peabody in June 1981. I find the reasons advanced on the record at the prehearing conferences of August 4 and October 13, 1983, together with the information provided in the motion and supporting affidavits of the stipulation for settlement show the settlement proposed is in accord with the purposes and policy of the Act.

Accordingly, it is ORDERED that the operator pay forthwith the amount of the settlement agreed upon, \$23,076.05, to the 134 miners in Exhibits A and B attached hereto and made a part hereof, and that subject to payment Docket Nos. KENT 82-104-D, LAKE 82-83-D, LAKE 82-84-D, and KENT 82-103-D insofar as it pertains to recalled (Category I) miners be, and hereby are, DISMISSED WITH PREJUDICE. It is FURTHER ORDERED that jurisdiction is retained over Docket No. KENT 82-103-D to the extent that it involves miners falling in the bypassed category (Category II), and the not rehired or recalled category (Category III), as well as over Docket Nos. KENT 82-105-D and KENT 82-106-D which involve miners in the bypassed category (Category II).

Joseph B. Kennedy  
Administrative Law Judge

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EXHIBIT A

Name	Docket No.	Mine	Rate	Hours	Total
Delmar Shepherd	KENT 83-104-D	Ken	\$11.876	8	\$95.00
Earl Greenwood	LAKE 82-83-D	Sunnyhill	\$10.698	32	\$342.34
James Henry	LAKE 82-83-D	Sunnyhill	\$10.698	32	\$342.34
Everett Tennant	LAKE 82-83-D	Sunnyhill	\$10.698	32	\$342.34
Gregory Dobson	LAKE 82-83-D	Simco	\$10.698	32	\$342.34
Wayne Hart	LAKE 82-83-D	Sunnyhill	\$10.698	32	\$342.34
James Womer	LAKE 82-83-D	Simco	\$10.698	32	\$342.34
Richard Beamer	LAKE 82-83-D	Sunnyhill	\$10.698	32	\$342.34
Frank Cronin	LAKE 82-83-D	Sunnyhill	\$10.993	32	\$351.78
Mark Wharton	LAKE 82-83-D	Sunnyhill	\$10.698	32	\$342.34
Howard Cognion	LAKE 82-83-D	Sunnyhill	\$10.698	32	\$342.34
		Total			\$3518.40

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EXHIBIT B

Name	Mine	Rate	Hours	Total
James J. Williams	Sunnyhill	\$10.698	32	\$342.34
Jerry T. Wilson	Sunnyhill	\$10.698	32	\$342.34
Roger L. Ginnery	Sunnyhill	\$10.698	32	\$342.34
Michael W. DeMoss	Sunnyhill	\$10.698	32	\$342.34
John R. Taylor	Sunnyhill	\$10.698	32	\$342.34
Loy E. Wiggins	Sunnyhill	\$10.698	32	\$342.34
Charles T. Whiteman	Sunnyhill	\$11.765	32	\$376.48
Ronald E. Groves	Sunnyhill	\$11.713	32	\$374.82
Thomas L. Williams	Sunnyhill	\$11.765	32	\$376.48
Howard Harris	Sunnyhill	\$10.698	32	\$342.34
Fred Robinson	Sunnyhill	\$10.698	32	\$342.34
D. D. Armstrong, Sr.	Sunnyhill	\$10.698	32	\$342.34
Kenneth W. Krebs	Sunnyhill	\$10.698	32	\$342.34
Ralph O. Erwin	Sunnyhill	\$11.765	32	\$376.48
Thomas D. Hewlett	Sunnyhill	\$10.698	32	\$342.34
Vernon L. Noland	Sunnyhill	\$12.364	32	\$395.65
Ralph E. Jasper	Sunnyhill	\$12.364	32	\$395.65
Chester Green	Simco	\$12.612	32	\$403.58
Larry Holsky	Camp #11	\$12.612	32	\$403.58
S. William Reed	Sunnyhill	\$12.364	32	\$395.65
Victor Strain	Sunnyhill	\$10.698	32	\$342.34
Paul Wright	Sunnyhill	\$10.698	32	\$342.34
Virgil Smith	Camp #11	\$10.698	32	\$342.34
Tommy Wilson	Camp #1	\$11.360	8	\$90.88
Hershel Knight	Ken Surface	\$11.226	16	\$179.62
Jackie Tichenor	Ken Surface	\$11.226	16	\$179.62
Burnie C. Cain, Jr.	Ken Surface	\$11.876	16	\$190.02
Ronnie Allen	Ken Surface	\$11.512	16	\$184.19
Jerry Wilcox	Ken Surface	\$11.512	16	\$184.19
Orval Wiles	Camp #11	\$10.698	8	\$85.58
Jerry D. Farris	Ken Surface	\$11.876	16	\$190.02
Dan W. Raymer	Ken Surface	\$11.876	16	\$190.02
Danny J. Roberts	Camp #2	\$10.998	8	\$87.94
Carl E. Smith	Camp #11	\$11.765	8	\$94.12
Cola Duncan	Camp #11	\$10.698	8	\$85.58
Allen D. Richardson	Camp #2	\$10.993	8	\$87.94
William D. Beadnell	Camp #1	\$11.765	8	\$94.12
Edward L. Harris	Camp #11	\$10.698	8	\$85.58
Carroll R. Jones	Ken Surface	\$11.876	16	\$190.02
Raymond E. Higbee	Camp #2	\$10.993	8	\$87.94
Donnie E. Howell	Camp #11	\$10.698	8	\$85.58
Arthur G. Mellott	Camp #2	\$10.993	8	\$87.94
Garry E. Conrad	Camp #2	\$10.993	8	\$87.94
Jimmie W. O'Neal	Camp #2	\$10.993	8	\$87.94
Jeffery L. Wilkins	Camp #1	\$11.765	8	\$94.12
William D. Hayes	Camp #1	\$10.993	8	\$87.94
Truman E. Mannahan	Camp #1	\$11.765	8	\$94.12
F. A. Gregory, Jr.	Camp #1	\$11.765	8	\$94.12
Steven W. Noffsinger	Camp #2	\$11.765	8	\$94.12
Lawrence E. Lee	Camp #2	\$11.765	8	\$94.12

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Harold Pointer	River Queen	\$11.512	16	\$184.19
Chapman Merrill	Camp #9Prep.	\$11.469	16	\$183.50
Donnie Jackson	Camp #9Prep.	\$11.469	16	\$183.50
Jose Martinez, Jr.	Camp #9Prep.	\$11.713	16	\$187.41
Charles Camplin	River Queen	\$11.512	16	\$184.19
William D. Green	Homestead	\$11.512	8	\$92.10
Vernon G. Warren	Camp #9Prep.	\$11.469	16	\$183.50
Kerry D. Sweeney	Camp #9Prep.	\$11.713	16	\$187.41
Dallas R. Miller	Camp #9Prep.	\$11.469	16	\$183.50
Carl Addington	AlstoSurface	\$11.876	8	\$95.01
Bobby Shemwell	Ken Surface	\$11.876	8	\$95.01
Dannie Harris	Ken Surface	\$11.512	8	\$92.10
Thomas M. Foster	Camp #1	\$11.765	32	\$376.48
Vernon W. Hines	Alston	\$11.145	8	\$89.16
Stephen M. Raymer	Alston	\$11.512	8	\$92.10
Jerald Harper	Alston	\$11.512	8	\$92.10
Betty A. Martin	Sinclair #2	\$10.698	8	\$85.58
Donald R. Sadler	Sinclair #2	\$10.993	8	\$87.94
David W. Wester	Sinclair #2	\$10.698	8	\$85.58
John Iler	Ken Surface	\$11.512	8	\$92.10
Stephen Goode	Ken Surface	\$11.512	8	\$92.10
David D. Shocklee	Ken Surface	\$11.876	8	\$95.01
Anna J. Johnson	Ken Surface	\$11.145	8	\$89.16
Randy G. Scott	Ken Surface	\$11.876	8	\$95.01
Dwayne A. Hill	Ken Surface	\$11.512	8	\$92.10
Delmar J. Parrent	River Queen	\$11.145	8	\$89.16
Steven W. Geary	Homestead	\$11.145	8	\$89.16
Robert J. Richard	Ken Surface	\$11.512	8	\$92.10
Wesley L. Lake	Ken Surface	\$11.876	8	\$95.01
Carlos R. Goff	Homestead	\$11.876	8	\$95.01
Michael E. Davis	Homestead	\$11.512	8	\$92.10
Darrell L. Rice	River Queen	\$11.512	8	\$92.10
Ellis J. Thompson	Homestead	\$11.512	8	\$92.10
Mark Killingsworth	Camp #9Prep.	\$11.876	8	\$95.01
Damon E. Robinson	Gibraltar	\$11.876	8	\$95.01
Charles J. Moegling	Gibraltar	\$12.527	8	\$100.22
Bobby D. Gentry	Alston	\$11.876	8	\$95.01
Jerrold L. James	River Queen	\$11.512	8	\$92.10
James M. Brown	Gibraltar	\$12.612	8	\$100.90
Liston Wright	Ken Surface	\$11.415	16	\$182.64
Melvin Johnson	WaltonCreek	\$10.698	8	\$85.58
Donnie J. Jackson	Ken #4	\$10.993	8	\$87.94
Jimmy R. Asher	Ken Surface	\$11.445	16	\$180.64
Charles D. Camplin	Ken #4	\$10.698	8	\$85.58
Charlie Crabtree	Ken #4	\$10.698	8	\$85.58
William D. Greene	Ken #4	\$10.698	8	\$85.58
John Isbell	Ken Surface	\$11.512	16	\$184.19
Kerry R. Sweeney	Ken #4	\$10.698	8	\$85.58
Tommy W. West	Ken Surface	\$11.512	16	\$184.19
Elmer R. Atherton	Ken Surface	\$11.512	16	\$184.19
Ralph F. Shephard	Ken Surface	\$11.512	16	\$184.19
Ellis Randolph	Camp #1	\$11.765	8	\$94.12
William B. Jones	Ken Surface	\$11.876	16	\$190.02
Roger D. Sims	Ken Surface	\$11.876	16	\$190.02

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George K. Whitten	Camp #11	\$10.993	8	\$87.94
Cary Graham	Camp #1	\$11.765	8	\$94.12
Vernon Keeling	Camp #11	\$10.698	8	\$85.58
Marvin Crick	Camp #9Prep.	\$11.713	16	\$187.40
James Ellis	Camp #1	\$10.698	8	\$85.58
James Milligan	Camp #11	\$11.765	8	\$94.12
Jerry Moore	Camp #11	\$11.765	8	\$94.12
Rickie Williams	Camp #9	\$11.713	16	\$187.41
Clifton Stewart	Ken Surface	\$11.876	16	\$190.02
Kenneth Sullivan	Camp #9Prep.	\$11.713	16	\$187.40
John D. Zachery	Camp #2	\$10.993	8	\$87.94
Ronnie L. Gossett	Camp #11	\$11.765	8	\$94.12
Otis Halcomb	Camp #9	\$11.713	16	\$93.70
John Chinn	Camp #1	\$11.765	8	\$94.12
Roger Travis	Camp #2	\$10.993	8	\$87.94
Lonnie Neumann	Camp #11	\$11.765	8	\$94.12
Kenneth Cardwell	Camp #11	\$11.765	8	\$94.12
Roy L. Miller	Camp #2	\$10.993	8	\$87.94
Dickie W. Rock	Ken #4	\$10.698	8	\$85.58

Total

\$19,557.65