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

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF TENNIS MAYNARD, JR.,
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. KENT 82-199-D

No. 1 Surface Mine

v.

DIAMOND P. COAL COMPANY, INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This is a discrimination proceeding initiated by the complainant against the respondent pursuant to Section 105(c) of the Federal Mine Safety and Health Act of 1977, charging the respondent with unlawful discrimination against Mr. Tennis Maynard, Jr., for exercising certain rights afforded him under the Act. The matter was scheduled for hearing in Paintsville, Kentucky, September 27, 1983, but the matter was continued when the parties advised me of a proposed settlement disposition of the dispute.

On November 9, 1983, the parties filed a Joint Stipulation and Settlement Agreement proposing to dispose of this matter. Included as part of the negotiated settlement is an agreement by the respondent or its subsidiaries to reinstate Mr. Maynard and to pay him certain back wages. In addition, respondent agrees to consider him for all job openings in a truck driver's position or in positions requiring lesser skills, and shall consider him for layoff, on the basis of his original hire date of November 20, 1981.

Respondent and its subsidiaries agree that they will not discriminate against Mr. Maynard in violation of Section 105(c) of the Act. Further, the parties agree that if Mr. Maynard voluntarily quits his employment with the companies or is

~1989

terminated by the companies for reasons which are not discriminatory under 105(c) of the Act, Maynard shall be treated for purposes of rehire in the same manner as other former employees who voluntarily quit or were terminated for reasons not discriminatory under 105(c) of the Act, as the case may be.

Conclusion

After careful review and consideration of the settlement terms and conditions executed by the parties in this proceeding, including Mr. Maynard, I conclude and find that it reflects a reasonable resolution of the complaint filed by MSHA on Mr. Maynard's behalf. Since it seems clear to me that all parties are in accord with the agreed upon disposition of the complaint, I see no reason why it should not be approved.

ORDER

The proposed settlement IS APPROVED. Respondent IS ORDERED AND DIRECTED to fully comply forthwith with the terms of the agreement. Upon full and complete compliance with the terms of the agreement, this matter is dismissed.

George A. Koutras
Administrative Law Judge