

CCASE:
KENNETH WIGGINS V. EASTERN ASSOCIATED
DDATE:
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TTEXT:

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

KENNETH A. WIGGINS,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No: WEVA 82-300-D
HOPE CD 82-32

EASTERN ASSOCIATED COAL CO.,
RESPONDENT

Keystone No. 1 Mine

DECISION GRANTING BACK PAY AND OTHER RELIEF

Appearances: William B. Talty, Esq., Talty and Carroll,
112 Central Avenue, Tazewell, Virginia,
for the Claimant
Mark C. Russell, Esq., Jackson, Kelly, Holt
and O'Farrell, P.O. Box 553, Charleston,
West Virginia, for the Respondent

Before: Judge Moore

The parties have prepared and agreed to a Final Order which disposes of all of the back pay, attorney's fees and other relief issues. I have signed the Final Order, a copy of which is attached, and directed the parties to comply therewith.

Charles C. Moore, Jr.,
Administrative Law Judge

FINAL ORDER

This proceeding came on for the entry of this Final Order upon the hearing on the merits held May 24th, 1983; the Decision on the Merits dated September 6, 1983; the Interim Order dated October 19, 1983; the Order of November 4, 1983, amending the aforesaid Interim Order; the hearing to determine relief held November 22, 1983; the decision granting back pay and other benefits dated December 19, 1983, and the Supplemental Order dated January 23, 1984. Upon consideration of all of which it is Adjudged and Ordered as follows:

1. The findings of fact and conclusions of law contained in the aforesaid decisions of September 6, 1983 and December 19, 1983 are hereby incorporated herein by reference, the same as if the same were fully set forth herein;

2. The complaint of the complainant made out in his charge is hereby sustained;

3. The respondent shall pay to the complainant all salary and benefits, including overtime and vacation pay, which he would have earned between March 26, 1982, the date of complainant's

~408

discharge by respondent, until August 30, 1982, the date on which this Judge determined the complainant would have been laid off by the respondent regardless of any discrimination under the Act. The parties have stipulated that the aforesaid amount is \$19,965.00, with the addition of certain expenses incurred by the complainant which the parties have stipulated the complainant is entitled.

4. The respondent may withhold from the aforesaid sum the sum of \$3,492.00 which the parties have stipulated is the amount of unemployment insurance received by the complainant during the period commencing March 26, 1982 through August 30, 1982. The aforesaid sum withheld by the respondent is to be paid by the respondent to the West Virginia Department of Employment Security to reimburse said Department for its payment of unemployment compensation insurance to the complainant during the aforesaid period.

5. The respondent shall remove from its records any and all mention of the notice of improper action dated March 26, 1982, and given to the complainant by Jackie Jackson, and of the events of April 8, 1982 pertaining to the discharge of the complainant by the respondent. The respondent is further ordered to refrain from any reference to either of the above events in response to any inquiries made to respondent by prospective employers of complainant.

6. Respondent shall pay to counsel for the complainant the sum of \$9,000.00, which sum the parties have stipulated is a fair and reasonable award of attorney's fees, at a rate of \$75.00 per hour for 120 hours expended, and an additional sum

~409

of \$608.23 for expenses incurred by counsel for complainant for transcripts, travel and long-distance telephone tolls.

Charles C. Moore, Jr.
Administrative Law Judge

Inspected:

William B. Talty

Counsel for Complainant

Larry W. Blalock/Charles M. Gage
Jackson, Kelly, Holt & O'Farrell

Counsel for Respondent