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ELIAS MOSES V. WHITLEY
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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| ELIAS MOSES, COMPLAINANT v. | DISCRIMINATION PROCEEDING Docket No. KENT 79-366-D |
| WHITLEY DEVELOPMENT CORPORATION, RESPONDENT | MSHA Case No. CD 79-217 Becks Creek Surface Mine |

DECISION ON REMANDED ISSUE OF BACK PAY

Appearances: William E. Hensley, Esq., and Don Moses, Esq., (FOOTNOTE 1) Corbin, Kentucky, for Complainant; David Patrick, Esq., Harrodsburg, Kentucky, for Respondent.

Before: Judge Steffey

PROCEDURAL BACKGROUND

The Commission issued a decision in this proceeding on August 31, 1982, affirming my finding that complainant had been discharged in violation of section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(1), and remanding the case to me "* * *" for the limited purpose of allowing the parties to present arguments and additional evidence concerning the proper amount of back pay to be awarded the discriminatee" (4 FMSHRC at 1475).

After receiving the Commission's decision of August 31, 1982, I issued an order on September 7, 1982, asking counsel for the parties to advise me by September 24, 1982, as to the types of evidence and/or arguments they might wish to present on the issues of back pay and asking whether they wished me to convene a supplemental hearing to receive evidence on the backpay issues. Thereafter, I issued an order on October 6, 1982, granting the parties' request for an extension of time within which to answer the questions asked in my order of September 7, 1982. The order of October 6 also answered respondent's questions regarding the kinds of evidence needed for resolving the back-pay issues.

Subsequently I issued an order on November 2, 1982, granting respondent's request for the convening of a hearing on the issues of back pay. The hearing was scheduled for November 30, 1982, because respondent's counsel is the "Public Defender" in his community and November 30, 1982, was the first day of a 3-day period then open on his calendar of hearings.

The hearing was convened on November 30, 1982, as scheduled, but it became obvious during the cross-examination of respondent's owner that he did not have in the hearing room the detailed facts required to support his claim that complainant would have been laid off in 1980 for economic reasons if he had not been discharged on July 3, 1979 (BPtr. 31; 34-36). (FOOTNOTE 2) Because of other commitments (BPtr. 57; 58; 60), there was no day during the remainder of the week after the convening of the hearing on November 30, 1982, when counsel for the parties and respondent's owner could meet to make a detailed examination of respondent's payroll records for the purpose of determining when complainant would have been laid off for economic reasons if he had not been discharged on July 3, 1979. Therefore, it was agreed that I would personally examine respondent's payroll records on December 1, 1982, that I would thereafter issue a proposed decision on the issue of back pay, and that the parties would be allowed to comment on the proposed decision and be granted a supplemental hearing if either party still believed that one was necessary (BPtr. 63).

Before I could issue the proposed decision on the issue of back pay, however, respondent filed on December 23, 1982, a motion asking that the record be reopened for the purpose of permitting respondent's counsel to introduce newly discovered evidence which respondent's counsel claimed he could not have discovered prior to the time the original hearing was held on November 18, 1980. The Commission issued a supplemental order on January 14, 1983, authorizing me to decide the issues raised by the filing of respondent's motion for reopening the record to receive newly discovered evidence. On January 18, 1983, I issued an order requiring respondent's counsel to submit by February 7, 1983, additional justification in support of his motion for reopening of the record.

On January 20, 1983, I issued the proposed decision on the issue of back pay. The proposed decision provided for the parties to file responses to the proposed decision on back-pay issues by February 21, 1983, and stated that no final decision as to back pay would be issued until I had first resolved all issues pertaining to respondent's motion for reopening the hearing.

Neither party filed any objections to the proposed decision within the 30-day period. Therefore, on February 28, 1983, I wrote the parties a letter advising them that I had decided to deny the motion to reopen the record and that I would issue the proposed decision as to back pay in final form after respondent had been given an opportunity to review my back-pay calculations so that my decision could specify a verified amount of back pay to which complainant was entitled.

Instead of replying to my request for a verification of the calculation of back pay, respondent filed a motion requesting that I disqualify myself as the judge in this proceeding. The Commission issued an order on March 23, 1983, 5 FMSHRC 297, authorizing me to decide the issues raised in the motion for disqualification and I issued an order on April 1, 1983, denying the motion for disqualification. In that order, I also extended to April 18, 1983, the time for the parties to submit objections, if any, to the proposed back-pay decision issued January 20, 1983. Respondent duly filed on April 18, 1983, a memorandum on the issues of back pay. That memorandum stated that respondent wished to submit additional evidence with respect to the back-pay issues.

On May 19, 1983, I issued two orders. The first order denied respondent's motion to reopen the record to receive newly discovered evidence and the second order granted respondent's request for the convening of a supplemental hearing on the back-pay issues. Because of respondent's role as public defender and the possibility of conflicting prior commitments, I provided for the parties to notify me of a date which would be mutually convenient for holding the second hearing pertaining to back pay. After receiving replies to that request, I issued on June 6, 1983, a notice providing for the second back-pay hearing to be held on July 12, 1983.

The issues considered at the hearing held on July 12, 1983, were broadened beyond the scope of the first back-pay hearing by the fact that respondent's counsel raised for the first time in this proceeding the issues of the amount which I had awarded for attorneys' fees in my original decision issued March 31, 1981, 3 FMSHRC 746. An additional issue was raised with respect to whether respondent properly refused to reinstate complainant to his original position as a dozer operator when he reported for work about 11 a.m. on February 8, 1983, instead of the designated day of February 7, 1983, because complainant's counsel failed to notify him of the offer of reinstatement until February 8, 1983.

After returning from the second back-pay hearing held on July 12, 1983, I realized that if I ruled that respondent had improperly refused to reinstate respondent because he was a day

late in reporting for work, I would have to order respondent to pay wages for a period in 1983 which had not been considered when data were originally obtained for purposes of calculating back pay. Therefore, I issued an order on August 18, 1983, providing for the parties to submit additional statements or arguments with respect to three questions posed in that order. Subsequently, I issued an order on September 15, 1983, granting respondent's motion for an extension of time to October 5, 1983, within which to reply to the order of August 18, 1983. Thereafter, I issued on September 27, 1983, an order granting complainant's alternative request for an extension of time within which to file a reply brief. Finally, on November 8, 1983, I issued an order requiring the parties to submit by December 2, 1983, (1) evidence with respect to the number of hours to be used in calculating back pay for the period in 1983 during which complainant was not employed because of his having reported a day late for reinstatement and (2) information pertaining to any wages which complainant may have earned during the applicable period in 1983.

Complainant's reply to the order of November 8, 1983, was mailed on December 7, 1983, which was 5 days after the date provided for the mailing of replies in my order of November 8. Therefore, on December 14, 1983, respondent's counsel filed a motion asking that I dismiss complainant's claim for compensation for the period in 1983 during which complainant was not reinstated. Complainant's counsel has filed no reply to respondent's motion. I shall hereinafter rule upon respondent's motion of December 14, 1983, as a part of this decision.

I shall not hereinafter again refer to respondent's motion for disqualification or motion for reopening the record because, as indicated above, I have disposed of all issues raised in those motions in my separate orders issued April 1, 1983, and May 19, 1983. I have acted upon the motions in separate orders apart from this decision because each of those matters has already been the subject of separate Commission orders and the record should clearly reflect the disposition which I have made as to each of those motions.

DETERMINATION OF FIRST PERIOD FOR REIMBURSEMENT OF BACK PAY

At the first back-pay hearing held on November 30, 1982, complainant testified that the only wages he had earned between the time of his discharge by respondent and the day of the hearing was an amount totaling \$20,612.47 which had been paid to him by Four J Coal Company and B.C. McCullah Bros., Inc., for work performed from June 15, 1981, through May 25, 1982 (BPtr. 21). Although two different employers appear to have employed complainant, the two names just indicate a change in a single employer's name (Exh. 2). Complainant stated that although he had tried to obtain work with other companies, he had been

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unsuccessful in doing so and that the only other money he had received between the time of his discharge on July 3, 1979, and the date of the hearing held on November 30, 1982, had been in the form of unemployment compensation. Complainant was aware that, if he ultimately receives back pay from respondent, he will have to reimburse the agency which paid him unemployment compensation (BPTr. 22).

Respondent's president, Pascual White, testified that his sales contract with Atlantic City Electric Company had been cancelled and that he had been unable to find any alternative market for the coal he was producing (BPTr. 23-24). White said that he had been reducing his coal-producing activities ever since 1980 and that if complainant had not been fired (BPTr. 51) on July 3, 1979, he would have been laid off on March 8, 1980, as a part of the general reduction in his work force (BPTr. 28; 33). White said that, for all practical purposes, he had completely closed down his coal-producing business in 1982 and had laid off about 49 miners in the process (BPTr. 49). White gave some dates on which he had laid off several miners. The first of those dates was March 8, 1980. Other dates were June 14, 1980, November 22, 1980, February 28, 1981, and June 20, 1981 (BPTr. 32; 34-36). He said that the largest single reduction in the work force occurred in mid April 1982 when his entire production of coal from surface mines was discontinued (BPTr. 37).

During White's cross-examination, it became very obvious that he did not have the detailed facts required to support a finding that complainant would have been laid off in 1980 if he had not been fired on July 3, 1979 (BPTr. 31; 34-36). Since White did not bring to the hearing any of his payroll records to support his allegations, counsel for the parties debated for several pages what could be done to determine just when complainant would have been laid off for economic reasons if he had not been discharged on July 3, 1979 (BPTr. 45-52). At that point in the discussion, I suggested that it might be best for me to go through the payroll records and report my findings to the parties, but it turned out that counsel for complainant could not attend a further discussion of the facts on Wednesday, December 1 (BPTr. 57), that White could not be present for a discussion on Thursday, December 2 (BPTr. 60), and that counsel for respondent could not attend a meeting on Friday, December 3 (BPTr. 57-58). The only alternative offered to my suggestion that I examine all of respondent's payroll records was offered by counsel for respondent, but that consisted of Xeroxing all of the records and sending them to me at my office in Falls Church, Virginia (BPTr. 59), but that would still have involved my doing all of the parties' work for them and would have deprived me of the assistance of White's bookkeeper in case I needed to ask any questions about the way the payroll records were maintained (Tr. 60).

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Because some of the parties, or their counsel, were not free to meet on any day during the remainder of the week, it was agreed that I would issue a proposed decision after I had gone to respondent's office in Williamsburg, Kentucky, and had reviewed respondent's payroll records. It was further agreed that the parties would be permitted to file objections to the proposed decision and would be provided with a further hearing if they believed one was necessary (BPtr. 63).

In keeping with my agreement to examine the payroll records, I drove to respondent's office in Williamsburg on December 1, 1982, and spent the entire day in making notes pertaining to respondent's employees who were either hired or laid off or voluntarily quit during 1979, 1980, 1981, and up to December 1, 1982. Thereafter I prepared the appendices attached to this decision and those appendices contain all of the information I obtained as a result of examining respondent's payroll records.

As I have indicated in the procedural background given above, the proposed decision was issued on January 20, 1983, and respondent's counsel filed objections to the proposed decision on April 18, 1983. I shall hereinafter explain what respondent's objections were and indicate the lack of merit to them, but a discussion of his objections to the proposed decision will be facilitated if I first proceed with the rationale originally used in my proposed decision for determining that complainant would have been laid off for economic reasons on June 12, 1982, if he had not been previously discharged on July 3, 1979.

White testified that when a general reduction in force was required because of the loss of coal orders and the reduction of coal production, it was his policy to lay off first the employees who had been hired last (BPtr. 25). In other words, he followed the normal rule of laying off employees in accordance with their seniority. White's bookkeeper provided me with the two sheets which comprise Appendix G. I have added to those two sheets the actual dates on which those employees were laid off. While a few of the lay-off dates do not correspond exactly with seniority, or date of hiring, it is obvious that White did adhere somewhat closely to the principle that a person with considerable seniority would be discharged after a person with little seniority.

Since White himself said that it was his intention to follow the general rule of laying off in accordance with the employees' seniority, I have applied that rule in trying to determine when complainant would have been laid off if he had not been dropped from the payroll at the end of June 1979. The discussion of the data which follows requires me to conclude that complainant would have been laid off on June 12, 1982, if he had not been dropped from the payroll at the end of June 1979.

Exhibit H in this proceeding is a copy of one of the sheets in respondent's payroll records. Exhibit H pertains to complainant, but it shows the characteristics which are common for all of respondent's payroll records. The caption at the top of the first column in Exhibit H reads "Week Ending". The hours worked on each of the 7 days of a given week are shown to the right of the column headed "Week Ending". The dates used in all of the attached appendices, except in Appendix G, are the dates shown in the column headed "Week Ending". The first two columns of Appendix G were prepared by respondent's bookkeeper and Appendix G shows in the second column the exact date in a given week when a person was hired. If one will examine the first name, "Boyd Keith", in Appendix G with Boyd Keith's name in Appendix A, he will find that I show Boyd Keith in Appendix A as having been hired on 8/29/81, whereas respondent's bookkeeper shows in Appendix G that Boyd Keith was hired on 8/24/81. In other words, the facts given in my appendices are based on end-of-the-week dates, instead of exact dates. For purposes of determining the time when complainant would have been laid off for economic reasons, had he continued to work for respondent, there is no need to make a finding which is so precise that it would make any difference whether an employee was hired on a Monday or a Friday or was discharged on a Wednesday instead of a Friday. Of course, that would not be true for computing back pay because a difference or mistake of even 1 day would cost respondent approximately \$60. Since Exhibit H is a copy of the payroll record used to pay complainant, there is no lack of precise data for determining the amount of back pay which is due to complainant.

Of the six persons, other than complainant, who either quit or were laid off in 1979, no two persons were laid off on the same day and only two persons were laid off in the same month, so there is no pattern to show that a general lay off occurred at all in 1979. Seven employees, excluding complainant, were hired on or after May 12, 1979, the date on which Moses was hired. Therefore, the work force remained very stable in 1979.

Of the 17 persons who either quit or were laid off in 1980, 3 left in January, 3 left in February, one left in March, 3 left in April, none left in May, 2 left in June, none left in July, 1 left in August, 1 left in September, none left in October, 2 left in November, and 1 left in December. Those figures show that there was no general lay off at any time in 1980. Moreover, since respondent hired 28 employees in 1980 and lost only 17 employees, the work force increased by 11 persons during 1980. Consequently, there is no evidence to show that Moses would have been laid off in 1980 because of an overall down turn in respondent's business.

Of the 41 employees who either quit or were laid off in 1981, 1 left in January, 2 left in February, 5 left in March, 4 left in April, 4 left in May, 10 left in June, 2 left in July, 3 left in August, 1 left in September, 3 left in October, 2 left in November, and 4 left in December. The reduction of 41 persons in respondent's work force supports a finding that something unusual occurred to cause such a large reduction in the work force within a period of 1 year. It is difficult, however, to make a finding that an extreme decline in respondent's production was occurring because the loss of 41 employees was offset by the fact that respondent hired 35 new employees in 1981. Consequently, the work force was less by only 6 employees at the end of 1981 than it was at the beginning of 1981. Therefore, the facts do not support a finding that Elias Moses would have been laid off in 1981 if he had not been discharged in 1979.

The facts for 1982, however, support a finding that respondent's business was suffering a steady decline. Of the 41 employees who either quit or were laid off in 1982, 1 left in January, 3 left in February, 3 left in March, 22 left in April, 1 left in May, 9 left in June, 1 left in July, none left in August or September, 1 left in October, and none left in November. Since the data here being analyzed were collected on December 1, 1982, no conclusion can be made as to December, except that it is a fact that on December 1, 1982, respondent's employees had shrunk to 8 if one excludes members of respondent's own family, a secretary, an airplane pilot, and an engineer who have been deliberately omitted from my consideration of the question of when Elias Moses would have been laid off if he had not been discharged in 1979. As opposed to the loss in respondent's work force of 41 employees in 1982, only 12 new employees were hired. While the 12 new employees were all laid off in 1982, they have to be deducted from respondent's work force in order to arrive at a correct conclusion as to the net reduction of the work force in 1982. When the aforesaid calculation is made, the net loss to respondent's work force in 1982 was 29 employees (41-12 = 29).

Elias Moses was employed as an operator of a D-9 Caterpillar tractor which he operated most of the time, although he did act as a mechanic's helper, hauled powder, and worked in the repair shop on some days when dozers were not available (Tr. 5-6; 32; 41; 63; 252). Respondent supplied me with a list of 11 employees (Appendix G) who could operate dozers. All but two of those employees were hired after Moses and not one of them was discharged prior to April 1982 when five of them were laid off. Four more dozer operators were laid off on June 12, 1982, and only one of them is still employed and he was hired in 1974, or about 5 years before Elias Moses was hired. The aforesaid figures support a conclusion that Elias

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Moses would have been discharged on June 12, 1982, along with the four other dozer operators who were laid off on that day, if he had not already been discharged at the end of June 1979.

The discussion above is easily understood if the facts are set forth in the tabulation hereinafter shown. Payroll data become important in the year 1979 because determining seniority for purposes of laying off employees must be based on those employees who were hired before and after May 12, 1979, the day on which Elias Moses was hired.

1979

- 38 Number of persons, excluding complainant, on payroll or hired in 1979 (Appendix B)
- 6 Number of persons, excluding complainant, who left work force in 1979 (Appendix I, page 1)
- 32 Number of persons actively employed at end of 1979

1980

- 28 Number of new persons hired in 1980 (Appendix C)
- 17 Number of persons who left in 1980 (Appendix I, page 1)
- 11 Net gain in personnel during 1980
- 32 Number of persons on payroll at end of 1979
- +11 Gain in employees during 1980
- 43 Number of persons actively employed or on payroll at end of 1980

1981

- 41 Number of persons who left respondent's employment in 1981 (Appendix I, page 1)
- 35 Number of new employees hired during 1981 (Appendix D)
- 6 Net loss in personnel during 1981
- 43 Number of persons on payroll at end of 1980
- 6 NET Loss in employees during 1981
- 37 Number of persons actively employed or on payroll at end of 1981

1982

- 41 Number of persons who left respondent's employment in 1982 (Appendix I, pages 1 and 2)
- 12 Number of new employees hired during 1982 (Appendix E)
- 29 Net loss in personnel during 1982
- 37 Number of persons on payroll at end of 1981
- 29 Loss in employees during 1982
- 8 Number of persons actively employed or on payroll as of December 1, 1982 (Appendix F)

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The eight persons who were still employed or were on the payroll as of December 1, 1982, are set forth below as reflected in Appendix F:

| Employee | Date Hired | Type of Work or Status |
|---------------------------|----------------|-----------------------------------|
| 1. McClure, Richard | Before 5/12/79 | Foreman and loader operator |
| 2. Meadors, Homer S. | Before 5/12/79 | Has been ill for months |
| 3. Moses, Arvil, Jr. | Before 5/12/79 | Truck driver and laborer |
| 4. Moses, Issac | Before 5/12/79 | Various jobs and dozer operator |
| 5. Perry, Leonidas Xerxes | Before 5/12/79 | Shop mechanic |
| 6. Trammel, Arnold | Before 5/12/79 | Truck driver and laborer |
| 7. Moses, Dwight Wayne | 8/29/81 | Tipple laborer and drill operator |
| 8. Daugherty, David John | 9/12/81 | Shop mechanic |

The tabulation above showing the eight employees who were still on respondent's payroll as of December 1, 1982, indicates that two employees, Dwight Moses and David Daugherty, who were employed after complainant, are still working. It could be argued, therefore, that if complainant had not been unlawfully discharged in 1979, he would still be employed in one of the positions now held by Dwight Moses or David Daugherty. I do not believe that such an argument is valid because there is nothing in the record to show that complainant has any experience to qualify him for the position of either a tipple laborer or a drill operator, although he does apparently have some experience as a person who has filled explosive holes with powder and other materials after the holes have been drilled. Also, while the record does show that complainant has worked as a mechanic's helper and a "powder man" (Tr. 41; 234), there is nothing in the record to show that he could qualify as a shop mechanic. Consequently, I believe that my finding above to the effect that complainant would have been laid off on June 12, 1982, when all but one of the other dozer operators were laid off, is correct and is supported by the preponderance of the evidence. Additionally, it should be noted that complainant was hired by White as a "dozer man" (Tr. 251) and it would be improper to hold that complainant should continue to be paid for working as a "dozer man" after all other dozer operators hired on or after the date of complainant's hiring have been laid off.

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Respondent's counsel objected before the Commission to my ordering complainant to be paid on the basis of a 40-hour week because the payroll records (Exhibit H) show that he only worked 40 or more hours for 3 of the 7 full weeks he was employed prior to his discharge. Respondent failed to introduce any evidence at the hearing held on November 30, 1982, to show that my use of a 40-hour week is wrong. On the other hand, if one adds the number of hours complainant worked during those 7 weeks, the total is 260 hours. If 260 hours are divided by 7, the average number of hours worked per week is 37.143 hours.

The testimony received at the original hearing held on November 18, 1980, shows that respondent was unable to work an average of 40 hours each week because one or more dozers were out of order. Also, it is a fact that complainant was offered alternative work on the day of his discharge, but he refused to perform the alternative work because he felt that it was assigned to him by the foreman in a degrading manner (Tr. 73; 234). In the absence of any evidence to show that complainant would have worked more than an average of 37.143 hours per week if he had remained in respondent's work force up to June 12, 1982, I shall base the calculation of back pay on a working week of 37.143 hours. When it comes to the question of paying complainant for holidays, complainant should be paid the same amount as other employees having equivalent seniority, as described by White at BP transcript pages 39 through 41 and 88 through 93.

Consideration of Respondent's Objections to Proposed Decision

Alleged Failure To Allow for Loss of Work as Result of Inclement Weather and Repair of Caterpillar Tractors

In my original decision issued March 31, 1981, 3 FMSHRC 746, I noted, at 3 FMSHRC 761 and 762, that complainant had worked more than 40 hours some weeks and less than 40 hours on other weeks, and concluded that a 40-hour week would be a reasonable accommodation to allow for the vagaries of operating surface mines, but respondent argued before the Commission that he wanted to present additional evidence as to the issue of back pay. Although respondent failed to present any evidence at the first back-pay hearing with respect to the number of hours per week complainant would have worked if he had continued to be employed after his discharge on July 3, 1979, I reexamined the 7 weeks during which complainant worked for respondent and found that the total number of hours worked for respondent were 260. Dividing that total by 7 resulted in an average working week of 37.143 hours. That figure of 37.143 hours appeared on page 7 of my proposed decision issued January 20, 1983, and that was the figure which I used in the calculation of back pay which

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I mailed to respondent on February 28, 1983, and requested respondent to check the accuracy of the calculations and let me know by March 15, 1983, whether any errors in the calculations had been found. Respondent never did reply to my request that the back-pay calculations be checked and the comments by respondent's counsel at the hearing (BPtr. 85-88) show that he had never examined the calculation of back pay which I had mailed to him on February 28, 1983, because he incorrectly claimed that my back-pay calculations assumed that respondent had worked 5 days each week for 52 weeks of the year (BPtr. 83). Respondent further contended erroneously that my back-pay calculations had failed to take into consideration the time lost because of bad weather and down-machine time (BPtr. 84). Respondent's counsel then stated that an examination of respondent's payroll records indicated that respondent's employees would lose 6 weeks of work each year because of bad weather and time required to repair equipment (BPtr. 84). Complainant's counsel agreed that respondent's estimate of 6 weeks lost because of bad weather and repair of equipment was a fair estimate (BPtr. 84).

Thereafter, I asked that respondent's counsel look at the back-pay calculation which I had mailed to him on February 28, 1983, and he recognized that I had used an average hourly working week of 37.143 hours and both respondent's and complainant's counsel agreed that my use of a figure of 37.143 hours was acceptable to them (BPtr. 100). Respondent's owner had testified at the original hearing that they worked 10 hours a day for 5 days each week (Tr. 248). If that were true, the working week would amount to 50 hours ($10 \times 5 = 50$) per week, or 2,600 hours per year ($50 \times 52 = 2,600$). Loss of 6 weeks of work as a result of bad weather and equipment repair would be 300 hours ($6 \times 50 = 300$). Deduction of 6 weeks or 300 hours would result in a working year of 2,300 hours which, when divided by 52, would result in an average working week of 44.2 hours.

Exhibit H, however, shows that complainant never worked more than 9 hours on any single day for the 7 full weeks he was employed by respondent. Application of the above assumptions to a working week of 45 hours ($9 \times 5 = 45$) and deduction of 6 weeks results in an average working week of 39.8 hours, instead of the average working week of 37.143 hours used by me for calculating back pay in the letter mailed to the parties on February 28, 1983. Therefore the use of a 40-hour week in my original decision (3 FMSHRC at 762) for purposes of calculating back pay was nearer to respondent's claimed loss of 6 weeks of work each year as a result of bad weather and equipment repair than the 37.143-hour week which I obtained by dividing complainant's total hours worked by 7. Nevertheless, since both parties have agreed that an average working week of 37.143 hours is acceptable, I shall hereinafter use an average working week of

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37.143 hours in calculating back pay for the period from the time of complainant's discharge to June 12, 1982, the day he would have been laid off for economic reasons if he had not been discharged on July 3, 1979.

Holiday Pay

In my calculations of back pay mailed to the parties on February 28, 1983, I excluded pay for all holidays because I did not have precise data for use in determining which holidays, if any, respondent's miners failed to work. At the second back-pay hearing, respondent's owner, White, testified that the miners are off for the entire week during which Christmas occurs. The miners are given a bonus for the Christmas week based on their seniority. If a miner has worked for less than a year for respondent, he is given \$50 and a ham; if he has worked for 1 year, he is given a bonus of \$100; if he has worked for respondent for more than a year, he receives a full week's pay (BPtr. 92). White valued a ham at \$32 (BPtr. 93).

Since complainant would have been working for respondent for less than a year by the time Christmas occurred in 1979, complainant will be paid \$50 plus a ham or \$82 for the Christmas week of 1979. Since complainant would have been working for respondent for over 1 1/2 years by Christmas of 1980, complainant will be paid a full week's salary for the Christmas week of 1980. Complainant was working for another company during the Christmas week of 1981. Since complainant would have been laid off for economic reasons by June 12, 1982, no amount is required to be paid for the Christmas week of 1982. No back pay will be awarded for other holidays on which White said he did not work (BPtr. 39; 88-91; 99).

Seniority Modified by Versatility

White had testified at the first back-pay hearing held on November 30, 1982, that he had chosen the miners to be laid off for economic reasons on the basis of seniority (BPtr. 25). At the second hearing, respondent's counsel argued that the work force was steadily declining for economic reasons in 1982 and that he believed complainant would have been laid off no later than March 1982 because only the employees with more seniority than complainant were kept to June 12, 1982, which was the economic discharge date determined by me in my proposed decision of January 20, 1983 (BPtr. 106). That claim cannot be sustained because Appendices G, I, and J show that the three miners (Rick Ball, Dellmar Sergent, and Richard Towe) who were laid off in March 1982 were hired in 1981 and 1982, except for Dellmar Sergent who was hired before complainant, but neither Sergent nor the other two miners laid off in March 1982 were dozer operators (BPtr. 108-109). Respondent, therefore, has

shown no reason why complainant, a dozer operator, would have been laid off in March 1982 instead of one of the three non-dozer operators who were actually laid off in March 1982.

Respondent's counsel also argued that complainant would have been discharged in April 1982, when 22 employees were laid off, rather than in June 1982, when the last group of dozer operators were laid off, because some of the operators who were discharged on June 12, 1982, had greater versatility to perform a variety of tasks than complainant has and that respondent kept them on the payroll longer than respondent would have kept complainant because they had a greater value to respondent than complainant had (BPtr. 107; 120-121). Respondent's owner, White, was unable, however, to give any facts to support his counsel's argument. When White was asked why he had waited until June 12, 1982, to lay off the dozer operators listed on Appendices G and I, page 2, he gave no reason other than seniority for retaining Anderson and Baird until June 12, 1982, even though they were hired after complainant. White also claimed that Daugherty, another employee hired after complainant, is still working as chief mechanic for the entire company and that Daugherty is qualified to do things which complainant could not even attempt to do (BPtr. 115). The argument pertaining to Daugherty is incorrect because the dozer operator laid off on June 12, 1982, is named Jimmy Lee Daugherty, whereas the chief mechanic is named David John Daugherty (Appendix A, Item 22).

White was then asked to explain why Homer Walker was laid off in April even though he had more seniority than Otis Anderson who was laid off in June. White explained that Walker was laid off before Anderson because Walker had a dozer of his own and wanted to get some contract work doing custom jobs like constructing farm ponds and that Walker asked to be laid off (BPtr. 118). White was also asked why Chester Tackett, who had more seniority than Anderson, was laid off in April before Anderson. White explained that Tackett was laid off before Anderson because Tackett had been a reclamation dozer man for Long Pit Coal Company in Tennessee and that they recalled him to complete some reclamation work which had not been finished (BPtr. 119). It is obvious from White's testimony that neither Walker nor Tackett were laid off because of a lack of versatility.

The final argument given by respondent in support of its contention that complainant would have been laid off before June 12, 1982, when the final group of dozer operators were laid off, was that complainant, during the 7 weeks when he did work for respondent, had declined to fill explosives holes on the day of his discharge and had refused to operate a back dump on a previous occasion (BPtr. 120). Respondent's argument that complainant would have been laid off prior to June 1982 because of his refusal to perform work other than that of a dozer operator is not supported by the preponderance of the evidence.

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Complainant testified that he worked as a mechanic's helper the first day of his employment by respondent (Tr. 5), that he worked as a mechanic on other occasions, that he worked in respondent's shop and hauled powder (Tr. 32), that he helped install a track on a D-6 dozer, changed oil, and did other work on dozers, such as replacing a muffler (Tr. 42; 63-64). White himself testified that he assigned complainant various kinds of work other than operating a dozer, including just cleaning up in the shop, and that he always paid complainant the wages of a dozer operator even when he was only doing the work of an ordinary laborer (Tr. 252; 279).

Complainant agreed that he did refuse to operate a back dump on one occasion because the work to be performed was very close to a steep bank and complainant did not believe that he had the expertise required for operating the back dump in that situation (Tr. 79). Complainant said that no argument developed when he declined to operate the back dump (Tr. 71). Complainant also declined to fill explosives holes on July 3, 1979, the day of his discharge, because the foreman offered the job in what complainant believed to be a degrading manner (Tr. 72-73). Although White claimed that none of the dozer operators laid off on June 12, 1982, had ever refused to perform any kind of work they were asked to do (BPtr. 115; 120), he did not give any examples of the kinds of work which any of them were qualified to do in addition to operating dozers; therefore, the record contains no facts which would support a finding that the dozer operators laid off on June 12, 1982, had any more ability to perform a variety of tasks than complainant possessed.

I pointed out at the hearing that I was not certain that it was even appropriate to consider versatility in addition to seniority in trying to determine the date on which complainant would have been discharged for economic reasons if he had not been unlawfully discharged on July 3, 1979, and respondent's counsel was given a period of 30 days within which to file a brief in support of his argument that I should take into consideration complainant's alleged lack of versatility in making a determination as to the date when he would have been laid off for economic reasons (BPtr. 126). At the end of the 30-day period, respondent's counsel filed on August 15, 1983, a letter in which he stated that he had been unable to find any cases directly in point on the issue of whether versatility should be given any weight over seniority in making a determination as to when employees should be laid off when a company is reducing its work force. I have not been able to find any cases which discuss that point either. Even if I had found some cases which show that versatility should be considered in addition to seniority, I still believe that it would be improper to give weight to versatility in the absence of any evidence to support such a contention. As I have demonstrated above, there is no evidence in this record to show that complainant would have

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been laid off any earlier than June 12, 1982, if he had not been discharged on July 3, 1979.

ATTORNEY'S FEES

In my original decision issued on March 31, 1981, I ordered respondent to pay complainant's counsel an amount of \$2,500. Respondent did not object to my award of attorney's fees in its arguments before the Commission, but did raise the issue of attorney's fees when it filed its answer to my proposed decision issued January 20, 1983. The primary ground used by respondent in support of its objection to my awarding attorney's fees in the amount of \$2,500 was that complainant's counsel did not send respondent's counsel a copy of the letter in which he asked for payment of 30 hours of work at a rate of \$100 per hour. My decision reduced the number of hours to 25 because of the failure by complainant's counsel to provide a breakdown of the time spent in conferences as compared with representing complainant at the hearing (3 FMSHRC at 762).

Complainant was represented by two attorneys at the first back-pay hearing held on November 30, 1982. In a letter to the parties dated February 28, 1983, I ruled that nothing had occurred at the hearing held on November 30, 1982, which warranted complainant's being represented by two attorneys and that I would not entertain a bill for attorney's fees which reflected more hours for attending that hearing than the time which would have been expended by one attorney.

At the second back-pay hearing held on July 12, 1983, complainant's counsel stated that he would forego any additional compensation for work done in connection with the back-pay issues if respondent's counsel would agree to the prior award of \$2,500 which I had provided for in my original decision. Respondent's counsel agreed to accept the offer of settlement of the issue of attorney's fees (BPtr. 103-104). The settlement of the issue of attorney's fees was thereafter mentioned (BPtr. 128) in connection with the possibility of complainant's counsel having to write a brief in reply to any brief which respondent's counsel might submit with respect to use of versatility in determining the date of complainant's being laid off for economic reasons. It was agreed at that time that complainant's counsel would submit an additional claim for attorney's fees if he believed that an additional amount should be awarded (BPtr. 128). Inasmuch as no additional request for attorney's fees has been submitted by complainant's counsel, no additional amount for attorney's fees needs to be awarded as a part of this back-pay decision.

DETERMINATION OF SECOND PERIOD FOR REIMBURSEMENT OF BACK PAY

Stipulation of Facts Regarding Complainant's Failure to be Reinstated

Respondent's counsel wrote a letter dated February 2, 1983, to complainant's counsel advising him "* * * we are now offering Mr. Moses a position with Whitley Development Corporation and he is to report to work on Monday, February 7, 1983, at the hour of 8:30 a.m., at the main office of the corporation." The letter was sent by certified mail and post office personnel placed a notice in the post office box of complainant's counsel on Friday, February 4, 1983, to the effect that a certified letter had been received by the post office. Complainant's counsel did not go to the post office until Monday, February 7, 1983, at which time he signed the return receipt showing that complainant's counsel actually received on February 7 the letter offering complainant a job at 8:30 a.m. on February 7, 1983 (BPtr. 69-74).

Complainant's counsel called another attorney who lives closer to complainant than the attorney who represents complainant in this proceeding. That attorney did not advise complainant that he had been offered a job until the following day, February 8, 1983. Complainant's counsel also called respondent's counsel to advise him that the letter of February 2, 1983, had not been received until February 7, 1983, but respondent's counsel was unavailable. Although respondent's attorney attempted to return the call from complainant's counsel on the next day, February 8, 1983, complainant's counsel did not know that respondent's counsel had called because he received no message to the effect that his call had been returned. Respondent's counsel submitted a telephone bill to prove that he had tried to return the call from complainant's counsel on February 8, 1983 (BPtr. 74-80).

As previously indicated above, complainant was advised on February 8, 1983, that he had been offered a position by respondent and complainant did report for work about 11:30 a.m. on February 8, 1983, but respondent's owner, White, advised complainant that his failure to report on the day the position was offered, that is, February 7, 1983, had caused respondent to call another dozer operator to work in complainant's place and, for that reason, respondent did not any longer have a position to offer complainant.

White's testimony shows that complainant had been recalled to the position of a dozer operator primarily to perform some reclamation work which was completed on March 31, 1983 (BPtr. 131). Therefore, if complainant had been given a job on February 7, 1983, it would have lasted only for the period from February 7 through March 31, 1983.

Consideration of Parties' Arguments as to Reinstatement

An order was issued on August 18, 1983, providing the parties with an opportunity to file briefs on the following three issues:

(1) Was complainant properly denied reinstatement for appearing 1 1/2 days after the designated time of reinstatement, taking into consideration that he appeared for reinstatement as soon as he learned of the offer of reinstatement?

(2) If it is held that complainant is still entitled to be reinstated to his job as a dozer operator, should he receive back pay for the period from February 8 through March 31, 1983, which is the period of time worked by the dozer operators recalled at the same time complainant was recalled?

(3) Assuming that complainant is entitled to back pay for the [37 1/2]-day period involved, is there any reason why the calculation should not be made on the basis of the 37.143-hour work week previously established for computing back pay?

The Issue of Reinstatement

Respondent argues that complainant was properly denied reinstatement for his failure to report at the time designated in the letter of February 2, 1983, which had been sent to complainant's counsel in plenty of time for complainant to have been on notice that the job offer required complainant to report for work at 8:30 a.m. on February 7, 1983. Respondent states that complainant's contention that he could not be reached on February 7, when the offer of reinstatement was required to be fulfilled, because of the need for complainant's counsel to provide notice through another attorney in the State of Tennessee, is not a valid argument because it would have been unethical for respondent or respondent's counsel to have contacted complainant directly, rather than through the attorney who is representing complainant in this proceeding.

Respondent's brief also contends that his business was in need of immediate income and that he could not be expected to delay the work which he expected to do on February 7, 1983, because respondent needed the immediate income to be derived from that work. Respondent claims that it would have been a simple matter for complainant's counsel to have telephonically advised respondent's counsel, or respondent directly, that he had not been able to reach his client so that respondent could have held the position open for an additional period of time.

Complainant's brief argues that respondent failed to provide complainant with sufficient time prior to the date given for reporting for work. Complainant contends that respondent should have mailed a copy of the letter offering reinstatement to complainant as well as to his attorney of record in this proceeding. It is argued that such dual notification would have allowed for any possible failure of communication between complainant and his counsel and would have enabled complainant to report for work at the designated time.

Section 2700.7(d) of the Commission's rules of procedure, 29 C.F.R. 2700.7(d), provides as follows:

(d) Service upon representative only. Whenever a party is represented by an attorney or other authorized representative who has signed any document filed on behalf of such party, or otherwise entered an appearance on behalf of such party, service thereafter shall be made upon the attorney or other authorized representative.

Since complainant has an attorney who has entered an appearance on his behalf and who has signed numerous documents on his behalf in this proceeding, there can be no doubt but that respondent's counsel fulfilled his legal obligation as to providing complainant with notice of the offer of reinstatement when he mailed the letter offering reinstatement to complainant's counsel.

It is interesting to note, however, that each attorney's brief condemns the other attorney for failure to get in touch with his client directly if the attorney of record was unavailable. Specifically, respondent's counsel argues that complainant's counsel should have called his client directly if complainant's counsel tried to get in touch with him personally on February 7, 1983, but could not do so. Likewise, complainant's counsel argues that respondent's counsel should have mailed a copy of the offer of reinstatement directly to complainant to assure that complainant would receive notice of the offer in sufficient time to report for work at the designated time. While it is true that when two parties in a proceeding are both represented by attorneys, each attorney is required to communicate with the other party's attorney, some common sense must prevail when the communication pertains to a matter of vital importance to an attorney's client. Therefore, when complainant's counsel received respondent's offer of reinstatement after 9 a.m. on February 7, 1983 (BPtr. 71), offering complainant a job and asking him to report for work at 8:30 a.m. on February 7, complainant's counsel had to realize that there was no way he could notify his client of the offer of reinstatement in sufficient time to permit his client to report for work at the appointed hour. Therefore, if an

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immediate call to the office of respondent's attorney failed to result in a personal communication with respondent's attorney, then, at that point, complainant's attorney would have been acting in his client's interest by calling respondent's office directly to explain why his client would be unable to report for work at 8:30 a.m. Therefore, respondent's offer of reinstatement mailed on February 2, 1983, offering complainant a job on February 7, 1983, cannot be said to be at fault.

On the other hand, it is a fact that complainant did report to work about 11:30 a.m. on February 8, 1983, which was as soon as complainant could do so after he was finally advised of the offer of reinstatement by his attorney. The reason given by respondent for refusing to allow complainant to commence working on February 8, 1983, is given on page 2 of respondent's brief which states that respondent could not be expected "* * * to delay the entire operation of its business which has been doing very poorly and which was in need of immediate income in order to satisfy the needs of one particular Petitioner in this matter."

The reason given by respondent for refusing to reinstate complainant is not supported by the preponderance of the evidence. Respondent's owner, White, testified at the hearing that the primary work for which six or seven dozer operators had been recalled was reclamation work. Although his statement is somewhat confusing, he described the kind of work which the dozer operators were performing as follows (BPtr. 131):

THE WITNESS: We're mining some coal--and reclamation work. They're not working--they're working, doing--for the bonding company--and the reclamation work on the jobs. All we're doing is the reclamation right now.

White subsequently explained that Whitley Development Corporation, the respondent in this proceeding, was the entity which recalled complainant and the other dozer operators, that Whitley employed them through March 31, 1983, and that Whitley was dissolved as a corporation at that time. In such circumstances, it does not appear that the work which complainant was recalled to do was of such an urgent nature that respondent would have been unduly prejudiced in its business activities if it had hired at least one of the dozer operators with the understanding that he might not be retained if complainant should appear a day or so late because respondent's job offer was delayed in reaching complainant.

Another reason for concluding that respondent would not have been prejudiced by allowing complainant to resume his previous job as a dozer operator is that White testified that

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he had recalled seven dozer operators, but that two of them (Anderson and Walker) found other work and either declined to accept White's offer of a job or left after working only a short time (BPtr. 131). Therefore, White did not actually have the full complement of dozer operators he had recalled and his reinstatement of complainant as a dozer operator would not have overly enlarged White's work force.

For the foregoing reasons, I find that respondent failed to justify its refusal to reinstate complainant to the position of a dozer operator simply because he reported 1 1/2 days late to accept the position.

Even if respondent had shown a good reason for refusing to reinstate complainant to his former position as a dozer operator, or to an equivalent position, he would still have been obligated to reinstate complainant. The Commission and the courts have held that a respondent who has violated section 105(c)(1) of the Act is obligated to reinstate the miner who has been illegally discharged. That obligation continues to exist until the discharged miner specifically declines to accept the offer of reinstatement (Glenn Munsey, 2 FMSHRC 3463 (1980); and Heinrich Motors, Inc. v. N.L.R.B., 403 F.2d 145 (2d Cir.1968)). Therefore, I find that respondent was obligated to reinstate complainant to his former job as a dozer operator when he appeared about 11:30 a.m. on February 8, 1983, after having received notice of reinstatement on that same day.

Period of Time for Which Complainant is Entitled to Receive Back Pay

Respondent's brief (p. 3) argues that complainant is not entitled to any back pay for any period after February 8, 1983, because complainant failed to accept the offer of reinstatement in a timely manner. Respondent also notes that if I award complainant any back pay for the period after February 8, 1983, I should obtain evidence to show that complainant did not, during that period, have any income which should be offset against any back pay awarded by me.

Complainant's brief argues that respondent's offer of reinstatement was deliberately intended to give complainant such a short time period between the making of the offer and the date complainant was required to report for work, that respondent would be able to refuse to employ complainant on the ground that he had failed to accept the offer in a timely fashion. Complainant contends, therefore, that since the offer was not made in good faith, complainant is entitled to be awarded back pay for the entire period from February 8, 1983, through March 31, 1983.

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I have already held in the previous topic above that respondent is obligated to reinstate complainant to his previous job, or an equivalent job, until such time as complainant specifically declines to accept reinstatement. Therefore, it is unnecessary for me to rule on complainant's argument that respondent failed to make the offer of reinstatement in good faith.

Determination of Average Hourly Week for Second Back-Pay Period

Respondent properly stated in its brief that I would have to determine for the second back-pay period whether respondent was shut down at times between February 8, 1983, and March 31, 1983, so as to produce a different hourly working week for calculation of back pay for the second period as compared with the 37.143 hourly week previously determined for the first back-pay period. Therefore, I issued an order on November 8, 1983, providing for respondent to submit information pertaining to determining the average hourly working week for the second back-pay period. The order also provided for complainant to submit an affidavit specifying what additional income, if any, he had earned during the period from February 8 through March 31, 1983.

In reply to the order of November 8, 1983, respondent submitted an affidavit stating that a review of the payroll records during the applicable period of time shows that the dozer operators employed during that period of time worked an average hourly week of 36.8 hours. Therefore, I shall hereinafter use the aforesaid average hourly week for computing back pay for the period from February 8 through March 31, 1983.

In reply to the order of November 8, 1983, complainant submitted an affidavit stating that he has not worked for any employer since May 24, 1982. Therefore, no additional offset of wages will be required to be made in computing back pay for the period from February 8 through March 31, 1983, other than the wages which were paid to complainant by B.C. McCullah Bros. and which have already been discussed on page 4 of this decision, supra.

Respondent's Motion to Dismiss Complainant's Right to Back Pay for Second Period

My order of November 8, 1983, required complainant's counsel to mail by December 2, 1983, an affidavit advising me of any income which complainant may have earned for the period from February 8 through March 31, 1983. The affidavit was not prepared until December 5 and was not mailed until December 7, 1983. Therefore, on December 14, 1983, respondent's counsel filed a motion asking that I dismiss complainant's right to back pay for the period from February 8 through March 31, 1983, for complainant's failure to comply with the time limitations in my order of November 8, 1983.

There would have been more merit to respondent's motion than there is if the sanction requested had been against complainant's counsel instead of against complainant personally. My order was mailed to complainant's counsel and the return receipt shows that complainant's counsel received the order on November 10, 1983. Although the affidavit was prepared by another attorney who appears to live in Tennessee, complainant's attorney still had a period of 22 days within which to prepare what turned out to be a two-line affidavit and mail it by December 2, 1983. The record shows that complainant only completed the first grade and that he cannot read very well (Tr. 101). Therefore, complainant could not have prepared an affidavit without the assistance of counsel and it is probably safe to conclude that complainant was unaware of the fact that his attorney had failed to prepare the affidavit in a timely fashion.

For the foregoing reasons, I believe that any sanctions for complainant's failure to submit the affidavit in a timely manner should be against complainant's counsel, rather than against complainant, who is not responsible for the lack of diligence on the part of his attorney. If complainant's counsel were asking for any attorney's fees at all for his work done in connection with the remanded back-pay issues, I would be inclined to deduct some amount from any fees which he might be requesting. As I have indicated under the heading of "Attorney's Fees", page 16, supra, complainant's counsel has waived any claim for attorney's fees in connection with the back-pay issues. Therefore, I find that the grant of respondent's motion would unduly penalize complainant because of his attorney's lack of diligence and that the motion to dismiss complainant's right to back pay for the period from February 8 through March 31, 1983, should be denied.

It should be noted that respondent is hardly in a position to be filing a motion for imposition of sanctions for failure of complainant to timely comply with my order of November 8, 1983, in view of the fact that respondent never did comply with the request in my letter of February 28, 1983, that he check my back-pay calculations submitted to him for examination. Respondent's refusal to comply with my request hereinafter forces me to make extensive back-pay and interest calculations which the Commission held was not a judge's obligation in its decision in Secretary of Labor on behalf of Milton Bailey v. Arkansas-Carbona Co., 5 FMSHRC 2042, 2054, issued December 12, 1983, in Docket No. CENT 81-13-D. It would be most unfair for me to impose sanctions on complainant for mailing an affidavit 5 days late and ignore respondent's outright refusal to make a reply of any kind to my request that it check the back-pay calculations which were submitted to it on February 28, 1983.

CALCULATION OF BACK-PAY AND INTEREST

In its decision issued December 12, 1983, in Secretary of Labor on behalf of Milton Bailey v. Arkansas-Carbona Company, 5 FMSHRC 2042, Docket No. CENT 81-13-D, the Commission adopted for back-pay awards "* * * the interest formula used by the National Labor Relations Board--that is, interest set at the 'adjusted prime rate' announced semi-annually by the Internal Revenue Service for the underpayment and overpayment of taxes" (5 FMSHRC at 2042). The Commission stated that the interest rates adopted in its Bailey decision should be applied to all "* * * discrimination cases pending before our judges as of the date of this decision" (5 FMSHRC at 2054). The Commission also stated on page 2054 of its decision that "* * * [t]he burden of computation of interest on back pay awards should be placed primarily on the parties to the case, not the judge, in order to comport with the adversarial system."

I am fairly certain that I understand how to calculate the interest, because of the Commission's well-presented example given in footnote 15 of its Bailey decision. In any event, I believe that I shall have to assume the burden of calculating the principal amount of back pay due to complainant, as well as the interest, because, as indicated above, respondent has already declined to reply to my prior request that it review my previous back-pay calculations and I have no reason to assume that respondent would reply to a second request that it calculate the amount of back pay and interest which I have found are due to complainant. An additional reason for me to believe that I must assume the burden of making the calculations is that the Commission's Bailey decision, also at page 2054, indicates that both parties should work together in making the back-pay and interest calculations. I have found in this proceeding that there is so much hostility between respondent and complainant that there is no likelihood that I could get the parties to prepare a joint calculation of back-pay and interest. In such circumstances, I believe that it is incumbent upon me to calculate the back pay and interest as a part of this decision.

I shall include with the copies of my decision mailed to the parties a copy of the Commission's decision in the Bailey case. Providing each party with a copy of the Bailey decision will enable the parties to review my calculations, if they are inclined to do so, and correct any errors I may have made prior to the time that any back-pay amount has to be paid to complainant.

As I explained in my letter to the parties dated February 28, 1983, I am beginning my computations of back pay on July 12, 1979. The reason for starting with the date of July 12 is that the foreman testified that the dozer was not returned

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from the repair shop until July 11 (Tr. 240). Inasmuch as complainant had declined the foreman's offer of an alternate type of work on July 3, 1979, the record supports a finding that, even if complainant had not been discharged on July 3, he would not have been able to operate a dozer until after the dozer had been returned from the repair shop on July 11, 1979. Therefore, the calculation of the number of days for which complainant is entitled to back pay for the first period begins with July 12, 1979, and extends to June 12, 1982, when complainant would have been laid off for economic reasons.

There must, of course, be deducted from complainant's back pay the wages he was paid by B.C. McCullah Bros., Inc., for the period from June 15, 1981, through May 25, 1982 (Exh. 1; BPtr. 21). Since complainant worked for no employer other than McCullah, it is relatively easy to make the required offsets for the wages paid to complainant by McCullah, as hereinafter shown.

Calculation of Principal Amount for First Period extending from July 12, 1979, through June 12, 1982

1979

Third Quarter

| | |
|--|---------|
| July 12 through July 31 = | 14 days |
| August 1 through August 31 = | 23 days |
| September 1 through September 30, excluding Labor Day (BPtr. 90) = | 19 days |
| 56 = total number of days worked in third quarter | |

As I have previously explained in my decision, respondent was operating surface mines which were closed on some days because of bad weather. At other times, complainant was unable to work because the Caterpillar tractors, or dozers, which he normally operated were in the shop for repairs. Therefore, the average number of hours worked each week has been adjusted to 37.143 hours to allow for the time for which complainant would not have been paid even if he had continued to be an employee up to June 12, 1982, when he would have been laid off for economic reasons.

In order to determine the hours for which complainant should be paid on a daily basis, it is necessary to divide the average number of hours per week of 37.143 by 5 which results in a daily average number of hours of 7.429. It should be borne in mind that respondent normally worked either a 9-hour or a 10-hour day. Therefore, a reduction of the daily hours to 7.429 is a larger allowance for bad weather and equipment repair than it would appear to be if one thinks of a normal 8-hour working day which is used in underground coal mines.

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The next step in the calculation is multiplying the number of days in the quarter (56) by the average number of hours worked (7.429) to produce a total of 416.02 hours worked in the third quarter. Multiplying 416.02 hours by \$7.50 produces \$3,120.15 which is the total back pay owed to complainant for the third quarter. The procedure here explained will be employed for calculating the back pay due for the remaining quarters.

Fourth Quarter

October 1 through October 31 = 23 days
November 1 through November 30, excluding 2 days
for Thanksgiving (BPtr. 98) = 20 days
December 1 through December 31, excluding Christmas
week (BPtr. 98) = 16 days
59 = number of days in fourth quarter

438.31 = hours worked in fourth quarter (59 days x 7.429 hours)
\$3,287.32 = back pay for fourth quarter (438.31 hours x \$7.50)
82.00 = plus amount due for Christmas week (\$50 + ham
or \$32) (BPtr. 98)
\$3,369.32 = total amount of back pay due for fourth quarter

1980

First Quarter

January 1 through January 31, excluding New Year's
Day = 22 days
February 1 through February 29 = 21 days
March 1 through March 31 = 21 days
64 = number of days in the first quarter

475.46 = hours worked in first quarter (64 x 7.429 hours)
\$3,565.95 = total back pay due for first quarter (475.46
hours x \$7.50)

Second Quarter

April 1 through April 30 = 22 days
May 1 through May 31, excluding Memorial Day
(BPtr. 39) = 21 days
June 1 through June 30 = 21 days
64 = number of days in the second quarter

475.46 = hours worked in second quarter (64 x 7.429 hours)
\$3,565.95 = total back pay due for second quarter (475.46
hours x \$7.50)

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Third Quarter

July 1 through July 31, excluding July 4 (BPtr. 90) = 22 days
August 1 through August 31 = 21 days
September 1 through September 30, excluding Labor
Day = 21 days

64 = number of days in the third quarter

475.46 = hours worked in third quarter (64 x 7.429 hours)
\$3,565.95 = total back pay for the third quarter (475.46
hours x \$7.50)

Fourth Quarter

October 1 through October 31 = 23 days
November 1 through November 30, excluding 2 days
for Thanksgiving = 18 days
December 1 through December 31, excluding Christmas
week = 18 days

59 = number of days in the fourth quarter

438.31 = hours worked in the fourth quarter (59 x 7.429 hours)

\$3,287.32 = back pay for fourth quarter (438.31 hours x \$7.50)
278.57 = plus amount due for Christmas week (1 week's salary
for employees who have worked for respondent for
over 1 1/2 years (BPtr. 92))

\$3,565.89 = total amount of back pay due for fourth quarter

1981

First Quarter

January 1 through January 31, excluding New Year's
Day = 21 days
February 1 through February 28 = 20 days
March 1 through March 31 = 22 days

63 = number of days in the first quarter

468.03 = hours worked in first quarter (63 x 7.429 hours)
\$3,510.22 = total back pay due for first quarter (468.03
hours x \$7.50)

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Second Quarter

April 1 through April 30 = 22 days
May 1 through May 31, excluding Memorial Day = 20 days
June 1 through June 14 (since complainant began working for B.C. McCullah Bros., Inc., on June 15, 1981, and worked for McCullah Bros. through December 31, 1981 (during which period, he earned a gross amount of \$11,790.59), complainant is not entitled to any back pay from June 15 through December 31, 1981, because his earnings from McCullah Bros. were greater than the amount he would have earned if he had continued to work for respondent at \$7.50 per hour for a working week of 37.143 hours) = 10 days
52 = number of days in the second quarter

386.31 = hours worked in the second quarter (52 x 7.429 hours)
\$2,897.32 = total amount of back pay due for second quarter
(386.31 hours x \$7.50)

Third and Fourth Quarters

As explained above, complainant was working for McCullah Bros. during the third and fourth quarters of 1981. Although McCullah Bros. paid the same basic rate of \$7.50 per hour which was paid by respondent, complainant worked more hours per day for McCullah Bros. than the 7.429 hours used for calculating back pay in this proceeding. Since complainant earned more by working for McCullah Bros. than he would have received if he had continued to work for respondent, it is not necessary to award any back pay for the third and fourth quarters of 1981.

1982

First Quarter

Since complainant worked for McCullah Bros. from January 1, 1982, through May 25, 1982, during which time he earned \$8,821.88, complainant is not entitled to any back pay for that period because he worked more hours per day than the 7.429 hours being used to calculate back pay in this proceeding. Therefore, his actual earnings were greater than the amount he would have received had he continued to work for respondent.

Second Quarter

As explained above, complainant was working for McCullah Bros. through May 25, 1982. Since complainant did not have a

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job after May 25, 1982, he would have been entitled to receive back pay for the remaining days in the second quarter, except that I have hereinbefore found that complainant would have been laid off on June 12, 1982, for economic reasons even if he had not been unlawfully discharged and had continued to work for respondent. Consequently, complainant is entitled to be paid only for the period from May 26 through June 12, 1982, or for a period of 13 days, as follows:

13 = number of days in the second quarter (May 26 through June 12, 1982)

96.58 = hours worked in the second quarter (13 x 7.429 hours)

\$724.35 = total back pay due for second quarter (96.58 hours x \$7.50)

Calculation of Principal Amount for Second Period Extending from February 8, 1983, through March 31, 1983

Inasmuch as I found on pages 17-23 of this decision, supra, that complainant is entitled to back pay for the period he would have worked if respondent had not declined to reinstate him to his former position as a dozer operator when he reported for work about 11:30 a.m. on February 8, 1983, it is necessary to compute the amount of back pay complainant would have received if he had been permitted to work as long as the other dozer operators who were recalled at that time. Since the period of employment extended only from February 8 through March 31, 1983, it is necessary to compute back pay only for the first quarter of 1983. Also, since complainant did not report for work until about noon on February 8, he is entitled to be paid for only a half day on February 8.

1983

First Quarter

January 1 through January 31 is not applicable because respondent did not produce coal during that period.

February 8 through February 28 = 14 1/2 days

March 1 through March 31 = 23 days

37 1/2 = number of days in the first quarter

Since the average hourly week applicable for the first quarter of 1983 is 36.8 hours, as hereinbefore explained on page 22, supra, of this decision, it is necessary to divide

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36.8 by 5 to determine the average number of hours worked each day. That calculation produces an average daily number of hours of 7.36 hours.

276.0 = hours worked in the first quarter (37.5 days x 7.36 hours)

\$2,070.00 = total back pay due complainant during the year
1983 (276 hours x \$7.50)

Since complainant was unemployed during the period from February 8 through March 31, 1983, it is not necessary to deduct any earnings from other employers in computing back pay for the second period for which complainant is entitled to back pay.

Interest Calculations for Back Pay Due Complainant for 1979, 1980, 1981, 1982, and 1983

The Commission's Bailey decision, supra, explains on pages 2051 and 2052 that interest is to be calculated on a quarterly basis and that the interest is to run from the last day of each quarter for which back pay is due through the date of payment. I am calculating the interest through the first quarter of 1984, or March 31, 1984, because I have no way to determine when the back-pay reimbursement will actually be made.

The interest rates are given on page 2051 of the Bailey decision as follows:

| | | |
|--------------------------------------|-------|-------------------------------------|
| January 1, 1978 to December 31, 1979 | ... | 6% per year (.0001666% per day) |
| January 1, 1980 to December 31, 1981 | | 12% per year (.0003333% per day) |
| January 1, 1982 to December 31, 1982 | | 20% per year (.0005555% per day) |
| January 1, 1983 to June 30, 1983 | | 16% per year (.0004444% per day) |
| July 1, 1983 to December 31, 1983 | | 11% per year (.0003055% per day) |
| January 1, 1984 to June 30, 1984 | | 11% per year (.0003055% per day) |

I have hereinbefore determined that complainant is entitled to the following amounts of back pay during the quarters listed below:

1979

Third quarter: \$3,120.15
Fourth quarter: \$3,369.32

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1980

First quarter: \$3,565.95
Second quarter: \$3,565.95
Third quarter: \$3,565.95
Fourth quarter: \$3,565.89

1981

First quarter: \$3,510.22
Second quarter: \$2,897.32

1982

Second quarter: \$ 724.35

1983

First quarter: \$2,070.00

Total Principal Amount of Back Pay: \$29,955.10

Employing the calculation method explained by the Commission in Footnote 15 on page 2053 of the Bailey decision, supra, the interest for each quarter of back pay should be calculated as follows:

| | |
|---|--|
| Third Quarter of 1979 through March 31, 1984 | |
| $\$3,120.15 \times 91 \text{ days} \times .0001666\% = \47.30 | which is 6% interest from last day of september 1979 through December 31, 1979 |
| $\$3,120.15 \times 720 \text{ days} \times .0003333\% = 748.76$ | which is 12% interest from January 1, 1980, through December 31, 1981. |
| $\$3,120.15 \times 360 \text{ days} \times .0005555\% = 623.96$ | which is 20% interest from January 1, 1982, through December 31, 1982. |
| $\$3,120.15 \times 180 \text{ days} \times .0004444\% = 249.58$ | which is 16% interest from January 1, 1983, through June 30, 1983. |
| $\$3,120.15 \times 270 \text{ days} \times .0003055\% = 257.36$ | which is 11% interest from July 1, 1983, through March 31, 1984. |

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Total interest due on third
quarter of 1979 back pay \$1,926.96

Fourth Quarter of 1979 through March 31, 1984

\$3,369.32 x 1 day x .0001666% = \$.56 which is 6% interest on
last day of fourth
quarter of 1979.

\$3,369.32 x 720 days x .0003333% = 808.55 which is 12% interest
from January 1, 1980,
through December 31,
1981.

\$3,369.32 x 360 days x .0005555% = 673.79 which is 20% interest
from January 1, 1982,
through December 31,
1982.

\$3,369.32 x 180 days x .0004444% = 269.51 which is 16% interest
from January 1, 1983,
to June 30, 1983.

\$3,369.32 x 270 days x .0003055% = 277.91 which is 11% interest
from July 1, 1983,
through March 31,
1984.

Total interest due on fourth
quarter of 1979 back pay \$2,030.32

First Quarter of 1980 through March 31, 1984

\$3,565.95 x 631 days x .0003333% = \$749.96 which is 12% interest
from last day of March
1980 through December 31,
1981.

\$3,565.95 x 360 days x .0005555% = 713.11 which is 20% interest
from January 1, 1982 ,
through December 31,
1982.

\$3,565.95 x 180 days x .0004444% = 285.24 which is 16% interest
from January 1, 1983,
through June 30,
1983.

\$3,565.95 x 270 days x .0003055% = 294.13 which is 11% interest
from July 1, 1983,
through March 31, 1984.

Total interest due on first
quarter of 1980 back pay \$2,042.44

~667

Second Quarter of 1980 through March 31, 1984

$\$3,565.95 \times 541 \text{ days} \times .0003333\% = \642.99

which is 12% interest on last day of June 1980 through December 31, 1981.

$\$3,565.95 \times 360 \text{ days} \times .0005555\% = 713.11$

which is 20% interest from January 1, 1982, through December 31, 1982.

$\$3,565.95 \times 180 \text{ days} \times .0004444\% = 285.24$

which is 16% interest from January 1, 1983, through June 30, 1983.

$\$3,565.95 \times 270 \text{ days} \times .0003055\% = 294.13$

which is 11% interest from July 1, 1983, through March 31, 1984.

Total interest due on second quarter of 1980 back pay \$1,935.47

Third Quarter of 1980 through March 31, 1984

$\$3,565.95 \times 451 \text{ days} \times .0003333\% = \536.02

which is 12% interest on last day of September 1980 through December 31, 1981.

$\$3,565.95 \times 360 \text{ days} \times .0005555\% = \713.11

which is 20% interest from January 1, 1982, through December 31, 1982.

$\$3,565.95 \times 180 \text{ days} \times .0004444\% = 285.24$

which is 16% interest from January 1, 1983, through March 31, 1984.

$\$3,565.95 \times 270 \text{ days} \times .0003055\% = 294.13$

which is 11% interest from July 1, 1983, through March 31, 1984.

Total interest due on third quarter of 1980 back pay \$1,828.50

Fourth Quarter of 1980 through March 31, 1984

$\$3,565.89 \times 361 \text{ days} \times .0003333\% = \429.05

which is 12% interest on last day of December 1980 through December 31, 1981.

~669

\$3,565.89 x 360 days x .0005555% = 713.10

which is 20% interest
from January 1, 1982,
through December
31, 1982.

\$3,565.89 x 180 days x .0004444% = 285.24

which is 16% interest
from January 1, 1983,
through June 30, 1983.

\$3,565.89 x 270 days x .0003055% = 294.13

which is 11% interest
from July 1, 1983,
through March 31, 1984.

Total interest due on fourth
quarter of 1980 back pay \$1,721.52

First Quarter of 1981 through March 31, 1984

\$3,510.22 x 271 days x .0003333% = \$317.05

which is 12% interest
on last day of March
1981 through
December 31, 1981.

\$3,510.22 x 360 days x .0005555% = 701.97

which is 20% interest
from January 1, 1982,
through December
31, 1982.

\$3,510.22 x 180 days x .0004444% = \$280.78

which is 16% interest
from January 1, 1983,
through June 30,
1983.

\$3,510.22 x 270 days x .0003055% = 289.54

which is 11% interest
from July 1, 1983,
through March 31, 1984.

Total interest due on first
quarter of 1981 back pay \$1,589.34

Second Quarter of 1981 through March 31, 1984

\$2,897.22 x 181 days x .0003333% = \$174.78

which is 12% interest
on last day of June 1981
through December 31, 1981.

\$2,897.22 x 360 days x .0005555% = 579.38

which is 20% interest
from January 1, 1982,
through December 31,
1982.

~670

\$2,897.22 x 180 days x .0004444% = \$231.75 which is 16% interest from January 1, 1983, through June 30, 1983.

\$2,897.22 x 270 days x .0003055% = 238.97 which is 11% interest from July 1, 1983, through March 31, 1984.

Total interest due on second quarter of 1981 back pay \$1,224.88

Second Quarter of 1982 through March 31, 1984

\$724.35 x 91 days x .0005555% = \$ 36.61 which is 20% interest on last day of June 1982 through December 31, 1982.

\$724.35 x 180 days x .0004444% = 57.94 which is 16% interest from January 1, 1983, through June 30, 1983.

\$724.35 x 270 days x .0003055% = 59.74 which is 11% interest from July 1, 1983, through March 31, 1984.

Total interest due on second quarter of 1982 back pay \$ 154.29

First Quarter of 1983 through March 31, 1984

2,070.00 x 91 days x .0004444% = \$ 83.71 which is 16% interest on last day of March 1983 through June 30, 1983.

\$2,070.00 x 270 days x .0003055% = 170.74 which is 11% interest from July 1, 1983, through March 31, 1984.

Total interest due on first quarter of 1983 back pay \$ 254.45

Total interest due on all back pay from July 12, 1979, through March 31, 1984 \$14,708.17

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Total back pay prior to
interest calculation \$29,955.10

Total back pay, including
interest to March 31, 1984.....\$44,663.27

Reinstatement Obligation Continues To Exist

Toward the end of the second day of the back-pay hearings, respondent's owner testified that he was still doing some reclamation work under a different corporate name inasmuch as Whitley Development Corporation was dissolved as of March 31, 1983. Respondent's owner may be under the impression that he may continue to mine coal under a different corporate name and thereby extinguish his obligation to reinstate complainant to his former position. Respondent's owner is still obligated to reinstate complainant to his former position as a dozer operator if respondent's owner continues to have an interest in another corporate entity which continues to mine coal in the circumstances described by respondent's owner (BPtr. 136; Glenn Munsey v. Smitty Baker Coal Co., Inc., 2 FMSHRC 3463 (1980)).

WHEREFORE, it is ordered:

(A) Pursuant to the Commission's remand of the back-pay issues, respondent, or respondent's owners, within 30 days from the date of this decision, shall provide complainant with the following relief:

(1) Pay complainant back wages totaling \$29,955.10 plus interest in the amount of \$14,708.17, such interest to be modified in accordance with the method for calculating interest as explained by the Commission in its Bailey decision, supra, if payment is made before or after March 31, 1984.

(2) Provide the additional relief, including payment of attorney's fees, as set forth in my original decision at 3 FMSHRC 763 to the extent that such relief has not already been awarded.

(B) Respondent's motion to dismiss complainant's right to back pay for the period from February 8, 1983, through March 31, 1983, is denied.

Richard C. Steffey
Administrative Law Judge

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~FOOTNOTE_ONE

1 Although Mr. Moses entered an appearance at the first back-pay hearing, he has not been awarded any reimbursement for

attorney's fees.

~FOOTNOTE_TWO

2 The letters "BP" are used as an abbreviation for the words "back pay" and mean that I am referring to one or more pages from the transcript of the hearings held on the back-pay issues on November 30, 1982, and July 12, 1983, to distinguish such references from other references to the transcript of the original hearing which was held on November 18, 1980.

Appendix A

ALL PERSONS EMPLOYED BEFORE AND AFTER ELIAS MOSES EXCEPT FOR OWNER AND MEMBERS OF HIS FAMILY

1. Adkins, Danny, Sr. hired 4/3/82; quit after 3 days to return to previous job
2. Adkins, Daniel, Jr., hired 3/27/82; laid off 6/12/82
- 3 Alsip, James hired 3/8/80; laid off 11/22/80; worked on both day and night shifts
- 4 Anderson, Ottis hired 11/7/81; laid off 6/12/82
- 5 Archer, Jeffrey Kent hired 1/3/81; laid off 10/3/81
- 6 Baird, Gary Dean hired 1/3/81; laid off 6/12/82
- 7 Ball, Lonnie hired 9/6/80; laid off 1/17/81
- 8 all, Rick Layne hired 1/16/82; laid off 3/27/82
- 9 Bolton, Don hired 1/9/82; laid off 4/24/82
- 10 Brown, Gregory hired 7/11/81; joined Army 8/15/81
- 12 Bryant, Franklin hired 2/16/80; laid off 3/27/80; worked day and night shifts
- 13 . Bunch, George W. hired 8/11/79; laid off 1/12/80 Worked only day shift
Campbell, Tom hired 8/22/81; left after 3 days because of back problem
14. Canada, Lester Carl hired 8/29/81; laid off 4/3/82
15. Carr, Gary hired 11/15/80; quit 3/14/81 to work for his father-in-law
16. Cash, Landy Russell hired 4/12/80
17. Chambers, Granville hired 10/24/81; quit 11/21/81 (Too far to drive.)
18. Cheek, Curtis Lee hired 1/9/82; laid off 4/17/82
19. Chinn, Homer R. hired before 5/12/79; laid off 4/4/81
20. Cornett, Harold hired before 5/12/79; laid off 9/15/79
21. Cox, Edmon Alonzo hired before 5/12/79; laid off 8/22/81 (Worked day shift)
22. Daugherty, David John hired 9/12/81; still working as shop mechanic
23. Daugherty, Jimmy Lee hired 7/4/81; laid off 6/12/82
24. Davis, James Ronald hired before 5/12/79; laid off 2/26/80 (Worked day shift only)
25. Davis, Ralph Hired 3/8/80; laid off 6/9/80 (Worked night shift only)
26. Douglas, Robert hired before 5/12/79; quit 4/21/79 to take better job
27. Duncan, Edwin hired 10/3/81; laid off 4/17/82
28. Durham, Bobby hired before 5/12/79; quit 4/5/80
29. Ellis, Ralph hired 2/16/80; laid off 2/25/80 (Worked night shift only)

30. Ellison, Donald R. hired 5/20/82; still working as company engineer
31. Ellison, Richard R. hired 3/6/82; laid off 4/24/82
32. Elswick, James Edward hired 1/3/81; laid off 10/30/82
33. Foley, Clyde H. hired before 5/12/79; laid off 6/12/82
34. Foley, Clyde Jeffrey hired before 5/12/79; laid off 4/24/82
35. Goff, Wendell hired before 5/12/79; laid off 12/31/81
36. Griffith, John Earle hired 10/6/79; laid off as employee, but still works on occasion (Airplane/pilot
37. Hamlin, Arnold hired 5/26/79; laid off 2/6/82
38. Hamlin, Eugene hired 10/11/80; laid off 11/22/80 (Night shift only)
39. Hawn, J.B. hired 4/17/82; laid off 4/24/82
40. Hinkle, James A. hired before 5/12/79; laid off 4/4/81
41. Huckaby, William Carl hired 7/4/81; quit 10/24/81 to drive truck
42. Hudson, Bobby Lynn hired before 5/12/79; quit 1/19/80
43. Hudson, Gary hired before 5/12/79; laid off 4/24/82
44. Jones, Sydney hired 4/3/82; worked 3 days and was recalled to previous job.
45. Keith, Boyd hired 8/29/81; laid off 6/12/82
46. Kilby, David hired 4/4/81; worked 2 days and quit to return to prior job.
47. King, Francis Asbury hired 4/11/81 as foreman; quit 4/3/82 (Too long a drive to work)
48. King George L. hired 1/9/82; laid off 4/3/82
49. Lay, Lansford hired 5/12/79; laid off 12/1/79
50. Lawson, Bobby R. hired 6/7/80; laid off 2/20/82
51. Lovitt, Donnie hired 2/7/81; quit 3/14/81
52. McClure, Gary Leon hired 9/13/80; laid off 4/17/82
53. McClure, Linda Jane hired 8/16/80; still working as office clerk or secretary
54. McClure, Richard hired before 5/12/79 as foreman; still working
55. McKee, Marion hired before 5/12/79; laid off 12/20/80
56. Magee, Vernon W. hired before 5/12/79; laid off 9/8/79
57. McNeil, Kathy L. hired before 5/12/79; quit 11/3/79 (Worked as clerk or secretary in office)
58. Meadors, James hired 12/13/80; laid off 4/24/82
59. Meadors, Kelly hired 8/16/80; laid off 6/20/81
60. Meadors, Homer S. hired before 5/12/79; has been sick for months
61. Meadors, Ora Lyle hired 11/29/80; laid off 6/20/81

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62. Meadors, Robert E. hired 3/15/80; quit 9/19/81 to take job closer to his home.
63. Moore, Donald E. hired 6/27/81; laid off 4/3/82
64. Moore, Roger Allen hired 6/6/81; laid off 8/29/81
65. Morris, Allen hired 4/25/81; worked 2 1/2 days and quit
66. Moses, Arvil, Jr., hired before 5/12/79; still working as truck driver and laborer
67. Moses, Benny hired 2/23/80; laid off 4/24/80 (Worked day shift only)
68. Moses, Dwight Wayne hired 8/29/81; still working at tipple as laborer
69. Moses, Elias hired 5/12/79; discharged 6/28/79
70. Moses, Isaac hired before 5/12/79; still working at various jobs
71. Moses, Ricky hired before 5/12/79; discharged 6/6/81
72. Mullis, Earl E. hired 4/25/81; laid off 6/13/81
73. Mullis, William R., Jr. hired 11/29/80; laid off 6/13/81
74. Nelson, Danny Michael hired before 5/12/79; laid off 4/24/82
75. Nelson, Robert Ernest hired 2/7/81; quit 12/19/81
76. Newport, Eldon hired 4/3/82; worked 1 day
77. Patrick, Charles David hired 1/3/81; still working as attorney
78. Patrick, Roger hired 4/3/81; laid off 4/3/82
79. Patrick, William Albert hired 7/18/81; laid off 6/12/82
80. Payne, David hired 3/22/80; retired 6/28/80
81. Pennington, James hired 12/20/80; laid off or discharged 2/7/80
82. Perry, Leonidas Xerxes hired before 5/12/79; still working as shop mechanic
83. Petrey, Gregory Wayne hired 10/4/80; laid off 6/13/81
84. Rains, Andy hired before 5/12/79; laid off 3/28/81
85. Rose, Benjamin hired 3/8/80; laid off 2/28/81
86. Sams, Billy Ray hired 2/27/82; discharged 3/27/82 (Represented himself to be an engineer)
87. Sergeant, Dellmar hired before 5/12/79; laid off 3/27/82
88. Sergeant, Jimmy M. hired before 5/12/79; laid off 12/31/81
89. Sergeant, Kermit Dale hired before 5/12/79; quit 7/21/79
90. Smith, William Morris hired 4/10/82; laid off 7/3/82
91. Stephens, Marty Alan hired 1/17/81; laid off 6/12/82
92. Stephens, R.L. hired 11/29/80; quit 3/14/81
93. Strunk, Floyd Jr. hired 5/2/81; quit 12/31/81
94. Sulfridge, Charles, Jr. hired 6/14/80; laid off 11/21/81
95. Sulfridge, Dale W. hired 10/11/80; quit 2/7/81
96. Sulfridge, David hired 11/29/80; laid off 5/2/81
97. Sulfridge, Gary hired 3/14/81; laid off 7/18/81
98. Sulfridge, Joel Lynn hired 8/16/80; laid off 5/23/81
99. Sutton, George Alex hired after 5/12/79 or on 9/22/79; laid off 10/20/79 (Tipple operator and electrician)
100. Tackett, Billy R. hired 7/11/81; laid off 5/22/82
101. Tackett, Chester hired 8/15/81; laid off 4/19/82
102. Taylor, Stanley A. hired 9/1/79; laid off 6/5/82
103. Thacker, Dallas hired 6/21/80; laid off 9/3/80

104. Thacker, Dennis Jr. hired before 5/12/79; laid off or quit 2/27/82
105. Thacker, Estill hired 4/11/81; laid off 7/11/81
106. Thacker, Johnny Ray hired 1/10/81; laid off 1/9/82
107. Towe, Richard hired 2/25/81; laid off 3/27/82
108. Trammel, Arnold hired 5/12/79; still working as truck driver and laborer
109. Vanover, Donald hired 10/3/81; laid off 4/24/82
110. Vanover, Edgar hired 2/23/80; laid off 10/31/81
111. Vanover, Ricky hired 5/9/81; laid off 6/20/81
112. Walker, Homer D. hired 11/22/80; laid off 6/6/81; called back 8/15/81; laid off 4/24/82
113. Walker, Edward hired before 5/12/79; laid off 6/27/81 (Worked day and night shifts)
114. Walker, Raymond hired before 5/12/79; laid off 3/28/81
115. Walker, Tony Gene hired 1/31/81; laid off 5/30/81
116. Weaver, Charles hired before 5/12/79; laid off 4/29/80 (Day shift only)
117. West, Dennis hired before 5/12/79; laid off 1/20/80
118. West, Puul D. hired before 5/12/79; laid off 5/23/81
119. Williford, Lester hired 3/8/80; laid off 8/30/80 (Worked day and night shift)
0. Wilson, Donald hired after 5/12/79 or 7/14/79; laid off 6/27/81
1. Young, Lloyd, Jr. hired 4/3/82; laid off 4/17/82

EMPLOYEES HIRED BEFORE 5/12/79 OR IN 1979

| Employee | Hired | Laid Off |
|----------------------------|----------------|-----------------|
| 1. Chinn, Homer R. | Before 5/12/79 | 4/4/81 |
| 2. Cornett, Harold | Before " | 9/15/79 |
| 3. Cox, Edmon Alonzo | Before " | 8/22/81 |
| 4. Davis, James Ronald | Before " | 2/26/80 |
| 5. Douglas, Robert | Before " | Quit 4/21/79 |
| 6. Durham, Bobby | Before " | Quit 4/5/80 |
| 7. Foley, Clyde H. | Before " | 6/12/82 |
| 8. Foley, Clyde Jeffrey | Before " | 4/24/82 |
| 9. Goff, Wendell | Before " | 12/31/81 |
| 10. Hinkle, James A. | Before " | 4/4/81 |
| 11. Hudson, Bobby Lynn | Before " | Quit 1/19/80 |
| 12. Hudson, Gary | Before " | 4/24/82 |
| 13. McClure, Richard | Before " | Still Working |
| 14. McKee, Marion | Before " | 12/20/80 |
| 15. Magee, Vernon W. | Before " | 9/8/79 |
| 16. Meadors, Homer S. | Before " | Sick for months |
| 17. Moses, Arvil, Jr. | Before " | Still Working |
| 18. Moses, Isaac | Before " | Still Working |
| 19. Moses, Ricky | Before " | 6/6/81 |
| 20. Nelson, Danny Michael | Before " | 4/24/82 |
| 21. Perry, Leonidas Xerxes | Before " | Still Working |
| 22. Rains, Andy | Before " | 3/28/81 |
| 23. Sergeant, Dellmar | Before " | 3/27/82 |
| 24. Sergeant, Jimmy M. | Before " | 12/31/81 |
| 25. Sergeant, Kermit Dale | Before " | Quit 7/21/79 |
| 26. Thacker, Dennis, Jr. | Before " | Quit 2/27/82 |
| 27. Trammel, Arnold | Before " | Still Working |
| 28. Walker, Edward | Before " | 6/27/81 |
| 29. Walker, Raymond | Before " | 3/28/81 |
| 30. Weaver, Charles | Before " | 4/29/80 |
| 31. West, Dennis | Before " | 1/20/80 |
| 32. West, Paul D. | Before " | 5/23/81 |
| 33. Lay, Lansford | 5/12/79 | 12/1/79 |
| 34. Hamlin, Arnold | 5/26/79 | 2/6/82 |
| 35. Wilson, Donald | 7/14/79 | 6/27/81 |
| 36. Bunch, George W. | 8/11/79 | 1/12/80 |
| 37. Taylor, Stanley A. | 9/1/79 | 6/5/82 |
| 38. Sutton, George Alex | 9/22/79 | 10/20/79 |

EMPLOYEES HIRED IN 1980

| Employee | Hired | Laid Off |
|-----------------------------|----------|-----------------|
| 1. Bryant, Franklin | 2/16/80 | 5/16/80 |
| 2. Ellis, Ralph | 2/16/80 | 2/25/80 |
| 3. Moses, Benny | 2/23/80 | 4/24/80 |
| 4. Vanover, Edgar | 2/23/80 | 10/31/81 |
| 5. Alsip, James | 3/8/80 | 11/22/80 |
| 6. Davis, Ralph | 3/8/80 | 6/9/80 |
| 7. Rose, Benjamin | 3/8/80 | 2/28/81 |
| 8. Williford, Lester | 3/8/80 | 8/30/80 |
| 9. Meadors, Robert E. | 3/15/80 | Quit 9/19/81 |
| 10. Payne, David | 3/22/80 | Retired 6/28/80 |
| 11. Lawson, Bobby R. | 6/7/80 | 2/20/82 |
| 12. Sulfridge, Charles, Jr. | 6/14/80 | 11/21/81 |
| 13 Thacker, Dallas | 6/21/80 | 9/3/80 |
| 14. Meadors, Kelly | 8/16/80 | 6/20/81 |
| 15. Sulfridge, Joel Lynn | 8/16/80 | 5/23/81 |
| 16. Ball, Lonnie | 9/6/80 | 1/17/81 |
| 17. McClure, Gary Leon | 9/13/80 | 4/17/82 |
| 18. Petrey, Gregory Wayne | 10/4/80 | 6/13/81 |
| 19. Hamlin, Eugene | 10/11/80 | 11/22/80 |
| 20. Sulfridge, Dale W. | 10/11/80 | Quit 2/7/81 |
| 21. Carr, Gary | 11/15/80 | Quit 3/14/81 |
| 22. Walker, Homer D. | 11/22/80 | 4/24/82 |
| 23. Meadors, Ora Lyle | 11/29/80 | 6/20/81 |
| 24. Mullis, William R., Jr. | 11/29/80 | 6/13/81 |
| 25. Stephens, R.L. | 11/29/80 | 3/14/81 |
| 26. Sulfridge, David | 11/29/80 | 5/2/81 |
| 27. Meadors, James | 12/13/80 | 4/24/82 |
| 28. Pennington, James | 12/20/80 | 2/7/80 |

EMPLOYEES HIRED IN 1981

| Employees | Hired | Laid Off up to 12-1-82 |
|-----------------------------|----------|--|
| 1. Archer, Jeffrey Kent | 1/3/81 | 10/3/81 |
| 2. Baird, Gary Dean | 1/3/81 | 6/12/82 |
| 3. Elswick, James Edward | 1/3/81 | 10/30/82 |
| 4. Thacker, Johnny Ray | 1/10/81 | 1/9/82 |
| 5. Stephens, Marty Alan | 1/17/81 | 6/12/82 |
| 6. Walker, Tony Gene | 1/31/81 | 5/30/81 |
| 7. Lovitt, Donnie | 2/7/81 | Quit 3/14/81 |
| 8. Nelson, Robert E. | 2/7/81 | Quit 12/19/81 |
| 9. Towe, Richard | 2/25/81 | 3/27/82 |
| 10. Sulfridge, Gary | 3/14/81 | 7/18/81 |
| 11. Patrick, Roger | 4/3/81 | 4/3/82 |
| 12. Kilby, David | 4/4/81 | Quit after 2 days |
| 13. King, Francis Asbury | 4/11/81 | Quit 4/3/82 (Foreman) |
| 14. Thacker, Estill | 4/11/81 | 7/11/81 |
| 15. Morris, Allen | 4/25/81 | after 2-1/2 days |
| 16. Mullis, Earl E. | 4/25/81 | 6/13/81 |
| 17. Strunk, Floyd Jr. | 5/2/81 | Quit 12/31/81 |
| 18. Vanover, Ricky | 5/9/81 | 6/20/81 |
| 19. Moore, Roger Allen | 6/6/81 | 8/29/81 |
| 20. Moore, Donald E. | 6/27/81 | 4/3/82 |
| 21. Daugherty, Jimmy Lee | 7/4/81 | 6/12/82 |
| 22. Huckaby, William Carl | 7/4/81 | 10/24/81 |
| 23. Brown, Gregory | 7/11/81 | Quit 8/15/81 |
| 24. Tackett, Billy R. | 7/11/81 | 5/22/82 |
| 25. Patrick, William Albert | 7/18/81 | 6/12/82 |
| 26. Tackett, Chester | 8/15/81 | 4/19/82 |
| 27. Campbell, Tom | 8/22/81 | Quit after 3 days |
| 28. Canada, Lester Carl | 8/29/81 | 4/3/82 |
| 29. Keith, Boyd | 8/29/81 | 6/12/82 |
| 30. Moses, Dwight Wayne | 8/29/81 | Still working at tipple as / laborer) |
| 31. Daugherty, David John | 9/12/81 | Still working as shop mechanic |
| 32. Duncan, Edwin | 10/3/81 | 4/17/82 |
| 33. Vanover, Donald | 10/3/81 | 4/24/82 |
| 34. Chambers, Granville | 10/24/81 | Quit 11/21/81 |
| 35. Anderson, Ottis | 11/7/81 | 6/12/81 |

EMPLOYEES HIRED IN 1982

| Employees | Hired | Laid Off |
|---------------------------|---------|-------------------|
| 1. Bolton, Don | 1/9/82 | 4/24/82 |
| 2. Cheek, Curtis Lee | 1/9/82 | 4/17/82 |
| 3. King, George L. | 1/9/82 | 4/3/82 |
| 4. Ball, Rick Layne | 1/16/82 | 3/27/82 |
| 5. Ellison, Richard R. | 3/6/82 | 4/24/82 |
| 6. Adkins, Daniel, Jr. | 3/27/82 | 6/12/82 |
| 7. Adkins, Danny, Sr. | 4/3/82 | Quit after 3 days |
| 8. Jones, Sydney | 4/3/82 | Quit after 3 days |
| 9. Newport, Eldon | 4/3/82 | Quit after 1 day |
| 10. Young, Lloyd, Jr. | 4/3/82 | 4/17/82 |
| 11. Smith, William Morris | 4/10/82 | 7/3/82 |
| 12. Hawn, J.B. | 4/17/82 | 4/24/82 |

EMPLOYEES STILL WORKING FOR WHITLEY DEVELOPMENT CORPORATION
AS OF DECEMBER 1, 1982

| Employee | Hired | Type of Work |
|---------------------------|----------------|--------------------------------------|
| 1. McClure, Richard | Before 5/12/79 | Foreman and Loader operator |
| 2. Moses, Arvil, Jr. | Before 5/12/79 | Truck driver and laborer |
| 3. Moses, Isaac | Before 5/12/79 | Various jobs and dozer operator |
| 4. Perry, Leonidas Xerxes | Before 5/12/79 | Shop mechanic |
| 5. Trammel, Arnold | Before 5/12/79 | Truck driver and laborer |
| 6. Moses, Dwight Wayne | 8/29/81 | Tipple laborer and drill operator |
| 7. Daugherty, David John | 9/12/81 | Shop mechanic |
| 8. Meadors, Homer S. | Before 5/12/79 | Has been ill for months |

OILER

| | | |
|-------------------|---------|------------------|
| Boyd Keith | 8-24-81 | Laid off 6-12-82 |
| Danny Adkins, Jr. | 3-25-82 | Laid off 6-12-82 |

LABORER

| | | |
|-----------------|---------|------------------|
| Richard Ellison | 3-03-82 | Laid off 4-24-82 |
|-----------------|---------|------------------|

DOZER

| | | |
|-----------------|----------------|-----------------------------|
| Clyde H. Foley | 3-09-74 | Laid off 6-12-82 |
| Isaac Moses | 3-30-74 | Still working as of 12/1/82 |
| Gary Baird | 12-29-80 | Laid off 6-12-82 |
| Jimmy Daugherty | 7-01-81 | Laid off 6-12-82 |
| Homer Walker | 8-09-81 | Laid off 4-24-82 |
| Chester Tackett | 8-13-81 | Laid off 4-19-82 |
| Roger Patrick | 8-31-81 | Laid off 6-12-82 |
| Edwin Duncan | 9-28-81 | Laid off 4-17-82 |
| Ottis Anderson | 11-04-81 | Laid off 6-12-82 |
| Don L.C. Bolton | 1-04-82 | Laid off 4-24-82 |
| Curtis Cheek | 1-04-82 | Laid off 4-17-82 |
| George King | 1-09-82 | Laid off 4-03-82 |
| Gary Hudson | Before 5-12-79 | Laid off 4-24-82 |

TRUCK

| | | |
|------------------|----------|-----------------------------|
| Arvil Moses | 3-31-78 | Still working as of 12/1/82 |
| Dellmar Sergeant | 10-23-78 | Laid off 3-27-82 |
| Arnold Trammel | 4-20-79 | Still working as of 12/1/82 |
| James Meadors | 12-11-80 | Laid off 4-24-82 |
| Gary McClure | 6-01-81 | Laid off 4-17-82 |
| Donald Moore | 6-24-81 | Laid off 4-03-82 |
| Lester Canada | 8-24-81 | Laid off 4-03-82 |
| Donald Vanover | 10-01-81 | Laid off 4-24-82 |
| Rick Ball | 1-16-82 | Laid off 3-27-82 |
| Lloyd Young | 3-31-82 | Laid off 4-17-82 |

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LOADER

| | | |
|---------------------|----------|-----------------------------|
| Richard McClure | 7-02-75 | Still working as of 12/1/82 |
| Clyde Jeffrey Foley | 5-21-79 | Laid off 4-24-82 |
| Danny Nelson | 2-02-81 | Laid off 4-24-82 |
| Gary Hudson | 11-23-81 | Laid off 4-24-82 |
| George King | 1-04-82 | Laid off 4-03-82 |

MECHANIC

| | | |
|-----------------|---------|-----------------------------|
| David Daugherty | 9-08-81 | Still working as of 12/1/82 |
|-----------------|---------|-----------------------------|

TIPPLE

| | | |
|----------------|----------|-------------------|
| James Elswick | 12-22-80 | Laid off 10-30-82 |
| Marty Stephens | 1-14-81 | Laid off 6-12-82 |

DRILL

| | | |
|----------------|---------|-----------------------------|
| Albert Patrick | 2-15-82 | Laid off 6-12-82 |
| Wayne Moses | 3-22-82 | Still working as of 12/1/82 |

FOREMAN

| | | |
|----------------|---------|------------------|
| Stanley Taylor | 8-28-79 | Laid off 6-12-82 |
| Billy Tackett | 7-06-81 | Laid off 5-22-82 |

HIRED 1979

Before 5-12-79

| | |
|------------------------|------------------------------------|
| Chinn, Homer R. | 4-4-81 |
| Cornett, Harold | 9-15-79 |
| Cox, Edmon Alonzo | 8-22-81 |
| Davis, James Ronald | 2-26-80 |
| Douglas, Robert | quit 4-21-79 |
| Durham, Bobby | quit 4-5-80 |
| Foley, Clyde H. | 6-12-82 |
| Foley, Clyde Jeffrey | 4-24-82 |
| Goff, Wendell | 12-31-81 |
| Hinkle, James A. | 4-4-81 |
| Hudson, Bobby Lynn | quit 1-19-80 |
| Hudson, Gary | 4-24-82 |
| McClure, Richard | still working/foreman |
| McKee, Marion | 12-20-80 |
| Magee, Vernon W. | 9-8-79 |
| McNeil, Kathy L. | quit 11-3-79 |
| Meadors, Homer S. | has been sick for months |
| Moses, Arvil, Jr. | still working/truck driver/laborer |
| Moses, Isaac | still working/various jobs |
| Moses, Ricky | 6-6-81 |
| Nelson, Danny Michael | 4-24-82 |
| Perry, Leonidas Xerxes | still working/shop mechanic |
| Rains, Andy | 3-28-81 |
| Sergent, Dellmar | 3-27-82 |
| Sergent, Jimmy | 12-31-81 |
| Sergent, Kermit Dale | quit 7-21-79 |
| Thacker, Dennis Jr. | 2-27-82 |
| Walker, Edward | 6-27-81 |
| Walker, Raymond | 3-28-81 |
| Weaver, Charles | 4-29-80 |
| West, Dennis | 1-20-80 |
| West, Paul D. | 5-23-81 |

MAY

| | |
|-------------------|------------------------------------|
| 12 Lay, Lansford | 12-1-79 |
| Moses, Elias | |
| Trammel, Arnold | still working/truck driver/laborer |
| 26 Hamlin, Arnold | 2-6-82 |

JULY

| | |
|-------------------|---------|
| 14 Wilson, Donald | 6-27-81 |
|-------------------|---------|

AUGUST

| | |
|---------------------|---------|
| 11 Bunch, George W. | 1-12-80 |
|---------------------|---------|

SEPTEMBER

| | |
|-----------------------|----------|
| 1 Taylor, Stanley A. | 6-5-82 |
| 22 Sutton, George lex | 10-20-79 |

OCTOBER

6 Griffith, John Earle-laid off
but works on occasion/pilot.

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HIRED 1980

FEBRUARY

16 Bryant, Franklin 3-27-80
Ellis, Ralph 2-25-80
23 Moses, Benny 4-24-80
Vanover, Edgar 10-31-81

MARCH

8 Alsip, James 11-22-80
Davis, Ralph 6-9-80
Rose, Benjamin 2-28-81
Williford, Lester 8-30-80
15 Meadors, Robert E. quit 9-19-81

22 Payne, David retired

APRIL

12 Cash, Landy Russell

JUNE

7 Lawson, Bobby R. 2-20-82

14 Sulfridge, Charles, Jr. 11-21-81

21 Thacker, Dallas 9-3-80

AUGUST

16 McClure, Linda Jane still working/office
Meadors, Kelly 6-20-81
Sulfridge, Joel Lynn 5-23-81

SEPTEMBER

6 Ball, Lonnie 1-17-81
13 McClure, Gary Leon 4-17-82

OCTOBER

4 Petrey, Gregory Wayne 6-13-81
11 Hamlin, Eugene 11-22-80
Sulfridge, Dale W. quit 2-7-81

NOVEMBER

15 Carr, Gary quit 3-14-81
22 Walker, Homer D. 4-24-82
29 Meadors, Ora Lyle 6-20-81
Mullis, William R. 6-13-81
Stephens, R.L. 3-14-81
Sulfridge, David 5-2-81

DECEMBER

13 Meadors, James 4-24-82

20 Pennington, James 2-7-80

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HIRED 1981

JANUARY

3 Archer, Jeffrey Kent 10-3-81
Baird, Gary Dean 6-12-82
Elswick, James Edward 10-30-82
Patrick, Charles David still working-attorney
10 Thacker, Johnny Ray 1-9-82
17 Stephens, Marty Alan 6-12-82
31 Walker, Tony Gene 5-30-81

FEBRUARY

7 Lovitt, Donnie quit 3-14-81
Nelson, Robert Ernest quit 12-19-81
25 Towe, Richard 3-27-82

MARCH

14 Sulfridge, Gary 7-18-81

APRIL

3 Patrick, Roger 4-3-82
4 Kilby, David quit 11
K ing, Francis Asbury quit
Thacker, Estill 7-11-81
25 Morris, Allen quit
Mullis, Earl E. 6-13-81

MAY

2 Strunk, Floyd, Jr. quit
9 Vanover, Ricky 6-20-81

JUNE

6 Moore, Roger Allen 8-29-81
27 Moore, Donald E. 4-3-82

JULY

4 Daugherty, Jimmy Lee 6-12-82
Huckaby, William Carl quit 10-24-81

11 Brown, Gregory quit 8-15-81
Tackett, Billy R. 5-22-82

18 Patrick, William Albert 6-12-82

AUGUST

15 Tackett, Chester 4-19-82
22 Campbell, Tom quit
29 Canada, Lester Carl 4-3-82
Keith, Boyd 6-12-82
Moses, Dwight Wayne still working laborer

SEPTEMBER

12 Daugherty, David still working shop mechanic

OCTOBER

3 Duncan, Edwin 4-17-82
Vanover, Donald 4-24-82
24 Chambers, Granville quit 11-21-81

NOVEMBER

7 Anderson, Ottis 6-12-82

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HIRED 1982

JANUARY

9 Bolton, Don 4-24-82
Cheek, Curtis Lee 4-17-82
King, George L. 4-3-82
16 Ball, Rick Layne 3-27-82

MARCH

6 Ellison, Richard R. 4-24-82
27 Adkins, Daniel, Jr. 6-12-82

APRIL

3 Adkins, Danny, Sr. quit 4-6-82
Jones, Sydney quit 4-6-82
Newport, Eldon quit 4-4-82
Young, Lloyd, Jr. 4-17-82
10 Smith, William Morris 7-3-82
17 Hawn, J.B. 4-24-82

LAID OFF-DISCHARGED

1979

April 21 Douglas, Robert
July 21 Sergeant, Kermit Dale
Sept. 8 Magee, Vernon W.
Sept. 15 Cornett, Harold
Oct. 20 Sutton, George Alex
Dec. 1 Lay, Lansford

1980

Jan. 12 Bunch, George W.
Jan. 19 Hudson, Bobby Lynn
Jan. 20 West, Dennis
Feb. 7 Pennington, James
Feb. 25 Ellis, Ralph
Feb. 26 Davis, James Ronald March
March.27 Bryant, Franklin

April 5 Durham, Bobby
April 24 Moses, Benny
April 29 Weaver, Charles

June 9 Davis, Ralph
June 28 Payne, David

Aug. 30 Williford, Lester

Sept. 3 Thacker, Dallas

Nov. 22 Alsip, James
Hamlin, Eugene

Dec. 20 McKee, Marion

1981

Jan. 17 Ball, Lonnie

Feb. 7 Sulfridge, Dale W.
Feb. 28 Rose, Benjamin

March 14 Carr, Gary
Lovitt, Donnie
Stephens, R.L.

March 28 Rains, Andy
Walker, Raymond

April 4 Chinn, Homer R.
Hinkle, James A.

April 6 Kilby, David
April 28 Morris, Allen

May 2 Sulfridge, David
 May 23 Sulfridge, Joel Lynn
 West, Paul D.
 May 30 Walker, Tony Gene

 June 6 Moses, Ricky
 Walker, Homer D. (called
 back 8/15/81 and laid
 off again 4/24/82).
 June 13 Mullis, Earl E.
 Mullis, William R., Jr.
 Petrey, Gregory Wayne
 June 20 Meadors, Kelly
 Meadors, Ora Lyle
 Vanover, Ricky
 June 27 Walker, Edward
 Wilson, Donald

 July 11 Thacker, Estill
 July 18 Sulfridge, Gary

 Aug. 15 Brown, Gregory
 Aug. 22 Cox, Edmon Alonzo
 Aug. 29 Moore, Roger Allen

 Sept.19 Meadors, Robert E.

 Oct. 3 Archer, Jeffrey Kent
 Oct. 24 Huckaby, William Carl
 Oct. 31 Vanover, Edgar

 Nov. 21 Chambers, Granville
 Sulfridge, Charles, Jr.

 Dec. 19 Nelson, Robert Ernest
 Dec. 31 Goff, Wendell
 Sergeant, Jimmy M.
 Strunk, Floyd, Jr.

 1982
 Jan. 9 Thacker, Johnny Ray

 Feb. 6 Hamlin, Arnold Feb.
 Feb.20 Lawson, Bobby R.
 Feb. 27 Thacker, Dennis, Jr.

 March.27 Ball, Rick Layne
 Sergeant, Dellmar
 Towe, Richard

 April 3 Canada, Lester Carl
 King, Francis Asbury
 King, George L.
 Moore, Donald E.
 Patrick, Roger
 April 4 Newport, Eldon

April 6 Adkins, Danny, Sr.
Jones, Sydney
April 17 Cheek, Curtis Lee
Duncan, Edwin
McClure, Gary Leon
Young, Lloyd, Jr.
April 19 Tackett, Chester
April 24 Bolton, Don
Ellison, Richard R.
Foley, Clyde Jeffrey
Hawn, J.B.
Hudson, Gary
Meadors, James
Nelson, Danny Michael
Vanover, Donald
Walker, Homer D.

May
22 Tackett, Billy R.

June 5 Taylor, Stanley A.
June 12 Adkins, Daniel, Jr.
Anderson, Ottis
Baird, Gary Dean
Daugherty, Jimmy Lee
Foley, Clyde H.
Keith, Boyd
Patrick, William Albert
Stephens, Marty Alan

July 3 Smith, William Morris

Oct. 30 Elswick, James Edward

HIRED 1979

Before 5-12-79

Chinn, Homer R.
Cornett, Harold
Cox, Edmon Alonzo
Davis, James Ronald
Douglas, Robert
Durham, Bobby
Foley, Clyde H. 6-12-82
Foley, Clyde Jeffrey 4-24-82
Goff, Wendell
Hinkle, James A.
Hudson, Bobby Lynn
Hudson, Gary 4-24-82
McClure, Richard
McKee, Marion
Magee, Vernon W.
Meadors, Homer S.
Moses, Arvil, Jr.
Moses, Isaac
Moses, Ricky
Nelson, Danny Michael 4-24-82
Perry, Leonidas Xerxes
Rains, Andy
Sergent, Dellmar 3-27-82
Sergent, Jimmy
Sergent, Kermit Dale
Thacker, Dennis, Jr. 2-27-82
Walker, Edward
Walker, Raymond
Weaver, Charles
West, Dennis
West, Paul D.

MAY

12 Lay, Lansford
Trammel, Arnold
26 Hamlin, Arnold 2-6-82

JULY

14 Wilson, Donald

AUGUST

11 Bunch, George W.

SEPTEMBER

1 Taylor, Stanley A. 6-5-82
22 Sutton, George Alex

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HIRED 1980

FEBRUARY

16 Bryant, Franklin
Ellis, Ralph
23 Moses, Benny
Vanover, Edgar

MARCH

8 Alsip, James
Davis, Ralph
Rose, Benjamin
Williford, Lester
15 Meadors, Robert E.
22 Payne, David

JUNE

7 Lawson, Bobby R. 2-20-82
14 Sulfridge, Charles, Jr.
21 Thacker, Dallas

AUGUST

16 Meadors, Kelly
Sulfridge, Joel Lynn

SEPTEMBER

6 Ball, Lonnie
13 McClure, Gary Leon 4-17-82

OCTOBER

4 Petrey, Gregory Wayne
11 Hamlin, Eugene
Sulfridge, Dale W.

NOVEMBER

15 Carr, Gary
22 Walker, Homer D. 4-24-82
29 Meadors, Ora Lyle
Mullis, William R.
Stephens, R.L.
Sulfridge, David

DECEMBER

13 Meadors, James 4-24-82
20 Pennington, James

~690

HIRED 1981

JANUARY

3 Archer, Jeffrey Kent
Baird, Gary Dean 6-12-82
Elswick, James Edward 10-30-82
10 Thacker, Johnny Ray 1-9-82
17 Stephens, Marty Alan 6-12-82
31 Walker, Tony Gene

FEBRUARY

7 Lovitt, Donnie
Nelson, Robert Ernest
25 Towe, Richard 3-27-82

MARCH

14 Sulfridge, Gary

APRIL

3 Patrick, Roger 4-3-82
4 Kilby, David
11 King, Francis Asbury
Thacker, Estill
25 Morris, Allen
Mullis, Earl E.

MAY

2 Strunk, Floyd, Jr.
9 Vanover, Ricky

JUNE

6 Moore, Roger Allen
27 Moore, Donald E. 4-3-82

JULY

4 Daugherty, Jimmy Lee 6-12-82
Huckaby, William Carl
11 Brown, Gregory
Tackett, Billy R. 5-22-82
18 Patrick, William Albert 6-12-82

AUGUST

15 Tackett, Chester 4-19-82
22 Campbell, Tom
29 Canada, Lester Carl 4-3-82
Keith, Boyd 6-12-82
Moses, Dwight Wayne

SEPTEMBER

12 Daugherty, David

OCTOBER

3 Duncan, Edwin 4-17-82
Vanover, Donald 4-24-82
24 Chambers, Granville

NOVEMBER

7 Anderson, Ottis

6-12-82

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HIRED 1982

JANUARY

9 Bolton, Don 4-24-82
Cheek, Curtis Lee 4-17-82
King, George L. 4-3-82
16 Ball, Rick Layne 3-27-82

FEBRUARY

27 Sams, Billy Ray 3-27-82

MARCH

6 Ellison, Richard R. 4-24-82
27 Adkins, Daniel, Jr. 6-12-82

APRIL

3 Adkins, Danny, Sr.
Jones, Sydney
Newport, Eldon
Young, Lloyd, Jr. 4-17-82
10 Smith, William Morris 7-3-82
17 Hawn, J.B. 4-24-82

MAY

20 Ellison, Donald R.