CCASE:
EDDIE SHARP V. MAGIC COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

EDDIE LEE SHARP,
COMPLAINANT
v.
MAGIC SEWELL COAL COMPANY,
RESPONDENT

DISCRIMINATION COMPLAINT

Docket No: WEVA 82-399-D
MSHA Case No: CD 82-27

Stone Run Mine No. 6

DECISION AWARDING BACK PAY, ETC.

Appearances: Eddie Lee Sharp, Elkins, West Virginia, Complainant;
John L. Henning, Esq., Elkins, West Virginia, for Respondent;

Before: Judge Moore

At the hearing in the above case respondent's safety director, who was neither an officer of the company nor an owner, testified that the company was out of business and had no assets. Although offered the opportunity to submit a financial statement subsequent to the hearing, the company did not do so. Nor has it responded to Mr. Sharp's post-decision claim for back wages and other expenses. Therefore, even though the judgement may turn out to be uncollectable, I am nevertheless issuing this decision requiring the payment of back pay and expenses. No reinstatement is possible inasmuch as the company is out of business. If the company maintains any records, it is ORDERED to purge those records of derogatory material concerning the illegal discharge of Mr. Sharp.

Mr. Sharp is not entitled to all of the back pay claimed by him. He is entitled to back pay from the date he was discharged, August 6, 1982 to the date the company went out of business on January 7, 1983. This is a total of 22 weeks and one day. During the first 2 weeks Mr. Sharp would have received a salary of $525 for each week. During the remaining twenty weeks Mr. Sharp received $168 a week in unemployment benefits which, subtracted from the sum of $525 leaves $357. $357 for twenty weeks is $7,140 and this, added to the $1,050 Mr. Sharp would have received during the first 2 weeks amounts to $8,190 in back wages. Adding payment for August 6 (at $105 per day) brings this to $8,295. Mr. Sharp estimates that he drove 150 miles in connection with the preparation of this case and at the standard rate allowed by the United States government of 20.5 cents a mile the travel expenses would be $30.75. The total judgement is for $8,325.75 plus interest.

The interest will be calculated in accordance with the formula set forth in the Commission's decision Secretary of Labor on behalf of Milton Bailey vs. Arkansas Carbon Company, 5 FMSHRC 2042, 2051-2053 (December 12, 1983). Copies of the 3 cited pages from the decision are attached hereto and made a part hereof. (FOOTNOTE 1). I do not personally understand the calculations but I am sure that if there are assets in this case, that MSHA will assist Mr. Sharp in obtaining enforcement of the order. The services of an accountant can be secured and he should be able to calculate the proper interest with the aid of a Hewlett-Packard computer, an abacus, and if necessary a ouija board. In any event, the interest can not be computed until the date of payment is known.

It is hereby ORDERED that respondent pay to Mr. Eddie Lee Sharp, within 30 days, the sums mentioned above with interest at the appropriate rate continuing until the day of payment.

Charles C. Moore, Jr.
Administrative Law Judge

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~FOOTNOTE_ONE

1 In my opinion the Commission did not use the percent sign correctly in the Arkansas-Carbona case. I have circled the percent signs that I think should be eliminated. In attempting to duplicate the results set forth in footnote 15 of that opinion, I found that the percent signs caused my calculations to be off by 2 decimal places. For example, if the annual percentage rate is 16% and using a 360 day year that the Commission prescribed, the daily percentage rate is .04444%; the figure used in multiplication, however, to obtain that percentage, is .0004444.

Attachments

The relevant adjusted prime rates, which we adopt as the Commission's remedial interest rates, are:

January 1, 1978 to December 31, 1979 %y(3)27 6% per year (.0001666% per day)
January 1, 1980 to December 31, 1981 %y(3)27 12% per year (.0003333% per day)
January 1, 1982 to December 31, 1982 %y(3)27 20% per year (.0005555% per day)
January 1, 1983 to June 30, 1983 %y(7)27 16% per year (.0004444% per day)
July 1, 1983 to December 31, 1983 %y(6)27 11% per year (.0003055% per day)
January 1, 1984 to June 30, 1984 %y(7)27 11% per year (.0003055% per day)

Because the IRS rates of interest are announced as annual rates, it is necessary, as explained below, to convert them to daily rates to calculate interest on periods of less than one year.13

There must also be a uniform method of computing the interest on back pay awards under the Mine Act. We have considered a number of possible computational approaches. We are mindful of the NLRB's extensive administrative and legal experience in this area. The NLRB's general back pay methodology is sound and has met with judicial approval. The labor bar is familiar with this system. We conclude that rather than expending administrative resources in attempting to devise a new system, we will best, and most efficiently, effectuate the remedial goals of section 105(c) of the Mine Act by adopting the major features of the NLRB computational system. We are satisfied that this system will do justice to the miner, avoid unnecessary penalization of the operator, and not prove unduly burdensome for our judges and bar to apply.

We therefore announce the following general rules for the computation of interest on back pay.

Back pay and interest shall be computed by the "quarterly" method. See Florida Steel Corp., 231 NLRB at 652; F.W. Woolworth Co., 90 NLRB 289 (1950), approved NLRB v. Seven-Up Bottling Co., 344 U.S. 344 (1953).14

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Under this method (referred to as the "Woolworth formula," after the NLRB's decision in the case of the same name, supra), computations are made on a quarterly basis corresponding to the four quarters of the calendar year. Separate computations of back pay are made for each of the calendar quarters involved in the back pay period. Thus, in each quarter, the gross back pay, the actual interim earnings, if any, and the net back pay are determined. See n. 14.

Interest on the net back pay of each quarter is assessed at the adjusted prime interest rate or rates in effect, as explained below. Like the NLRB, we will assess only simple interest in order to avoid the additional complexity of compounding interest. Interest on the amount of net back pay due and owing for each quarter involved in the back pay period accrues beginning with the last day of that quarter and continuing until the date of payment. See Florida Steel Corp., 231 NLRB at 652. In calculating the amount of interest on any given quarter's net back pay, the adjusted prime interest rates may vary between the last day of the quarter and the date of payment. If so, the respective rates in effect for any quarter or combination of quarters must be applied for the period in which they were operative. The interest amounts thus accrued for each quarter's net back pay are then summed to yield the total interest award.

For administrative convenience, we will compute interest on the basis of a 360-day year, 90-day quarter, and 30-day month. Using these simplified values, the amount of interest to be assessed on each quarter's net back pay is calculated according to the following formula:

Amount of interest = The quarter's net back pay x number of accrued days of interest (from the last day of that quarter to the date of payment) x daily adjusted prime rate interest factor.

The "daily adjusted prime rate interest factor" is derived by dividing the annual adjusted prime rate in effect by 360 days. For example, the daily interest factor for the present adjusted prime rate of 11% is

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0003055% (.11/360). The daily interest factors are shown in the list of adjusted prime rates above. A computational example is provided in the accompanying note.15

~FOOTNOTE_THIRTEEN

13 Prior to the passage of the Tax Equity and Fiscal Responsibility Act of 1982, the IRS announced the adjusted prime rate in October of the appropriate year to take effect the following February. For ease of administration under the Mine Act, however, we have bounded certain interest periods at December 31 and January 1 rather than at January 31 and February 1. (The NLRB's General Counsel has followed the same simplifying approach. NLRB Memorandum GC 83-17, August 8, 1983.)

~FOOTNOTE_FOURTEEN

14 Back pay is the amount equal to the gross pay the miner would have earned from the operator but for the discrimination, less his actual interim earnings. Bradley v. Belva Coal Co., 4 FMSHRC 982, 994-95 (June 1982). The first figure, the gross pay the miner would have earned, is termed "gross back pay." The third figure, the difference resulting from subtraction of actual interim earning from gross back pay, is "net back pay"the amount actually owing the discriminatee. Interest is awarded on net back pay only.

In a discrimination case where, as here, there has been an illegal discharge, the back pay period normally extends from the date of the discrimination to the date a bona fide offer of reinstatement is made. (As we conclude below, the period may also be tolled when the discriminatee waives the right to reinstatement.)

15 The mechanics of the quarterly computation system may be illustrated by the following hypothetical example, in which a miner is discriminatorily discharged on January 1, 1983, and offered reinstatement on September 30, 1983. Payment of back pay and interest is tendered on October 15, 1983. After subtraction of the relevant interim earnings, the net back pay of each quarter involved in the back pay period is as follows:

First quarter (beginning January 1, 1983)	$1,000
Second quarter (beginning April 1, 1983)	$1,000
Third quarter (beginning July 1, 1983)	$1,000
Total net back pay	$3,000

The adjusted prime interest rates in effect in 1983 are:

16% per year (.0004444% per day) from January 1, 1983, to June 30, 1983;

11% per year (.0003055% per day) from July 1, 1983, to December 31, 1983.

The interest award on the net back pay of each of these quarters is as follows:

(1) First Quarter:

(a) At 16% interest until end of second quarter of 1983:
$1,000 net back pay x 91 accrued days of interest (last day of first quarter plus the entire second quarter) x .0004444 = $40.44

Plus,

(b) At 11% interest for entire third quarter through the date of payment:
$1,000 net back pay x 105 accrued days of interest (the third quarter plus 15 days) x .0003055 = $32.07

(c) Total interest award on first quarter:
$40.44 + $32.07 = $72.51

(2) Second Quarter

(a) At 16% interest for the last day of the second quarter
$1,000 x 1 accrued day of interest x .0004444 = $.44

Plus,

(b) At 11% interest for the entire third quarter through date of payment:
$1,000 x 105 accrued days of interest x .0003055 = $32.07

(c) Total = $.44 + $32.07 = $32.51

(3) Third Quarter:

At 11% interest for the last day of the third quarter through date of payment:
$1,000 x 16 accrued days of interest x .0003055 = $4.88 total

(4) Total Interest Award:

$72.51 + 32.51 + 4.88 = $109.90

This amount is added to the total amount of back pay ($3,000), for a total back pay award of $3,109.90.