

CCASE:
SOL (MSHA) V. OTTAWA SILICA
DDATE:
19840815
TTEXT:

~1979

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

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
JOHN COOLEY,
COMPLAINANT

DISCRIMINATION PROCEEDING
Docket No. LAKE 81-163-DM
Michigan Division Quarry

v.

OTTAWA SILICA COMPANY,
RESPONDENT

ORDER

On March 30, 1984, the Commission issued its decision in this matter reaffirming my decision that the complainant John Cooley was discriminated against in violation of section 105(c) of the Federal Mine Safety and Health Act of 1977. However, the Commission vacated my findings concerning the back pay and other benefits due the complainant, and remanded the case for a recomputation of the amount due the complainant.

In response to my Order of April 16, 1984, the parties have now filed a stipulation concerning the amount due to the complainant. Upon review and consideration of this stipulation, I conclude and find that it complies with the Commission's remand order, and a copy of the stipulation is attached hereto and incorporated by reference. However, I take note of two typographical errors in the materials attached as part of the stipulation, and they are as follows:

Exhibit B - Back Pay 2nd Quarter 1980 - Should read
\$2,168.08, rather than \$21.68.08.

Exhibit B - Back Pay 3rd Quarter 1980 \$3,542.98. The
amount shown as \$3,542.98, rather than \$4,032.05,
should be shown as the actual multiplier for each of
the computations made for the periods reflected as the
interest due the complainant.

Having noted the aforesaid typographical errors, the corrections noted are incorporated herein by reference, and the stipulations, as corrected, are herein entered as my final

~1980

order in this matter, and the respondent IS ORDERED to make payment to Mr. Cooley in the amounts shown, and to reinstate him as provided in my decision.

George A. Koutras
Administrative Law Judge

~1981

STIPULATION OF PARTIES ON REMAND

Now comes the parties, by their respective attorneys and, in response to the March 30, 1984 Decision of the Federal Mine Safety and Health Review Commission remanding this matter to Administrative Law Judge George Koutras for a reformulation of the remedial order, enter into the following stipulations.

1. Administrative Law Judge George Koutras' June 3, 1982 Decision ordered defendant to reinstate John Cooley with back pay from May 5, 1980.

2. John Cooley has not been reinstated.

3. Had John Cooley been reinstated on May 5, 1980, he would have been furloughed by defendant due to lack of work beginning April 19, 1982.

4. John Cooley's furlough would have continued through at

~1982

least April 20, 1984. Pursuant to the collective bargaining agreement between the Michigan Division of the Ottawa Silica Company and Teamster's Local Union No. 283 (hereinafter Labor Agreement), a furlough of more than two years breaks the employee's seniority and terminates his right to recall with defendant.

5. For the perior May 5, 1980 through April 19, 1982, John Cooley's wages as a laborer would have totaled \$28,738.08.

6. For the period May 5, 1980 through April 19, 1982, John Cooley's vacation pay would have totaled \$618.40.

7. Pursuant to the Labor Agreement, for the period May 5, 1980 through April 19, 1982, defendant shall make pension contributions on behalf of John Cooley to the Central States Southeast and Southwest Areas Pension Fund.

8. For the period May 5, 1980 through April 19, 1982, the total of John Cooley's back wages listed in paragraphs 5 through 7 herein is \$29,356.48 and is broken down by calendar quarters in the attached Exhibit A.

9. Under the formula provided in Bailey v Arkansas-Carbona Co. & Weller, 3 MSHC 1152 (Dec. 1983), interest on the \$33,053.17 in back wages through June 30, 1984 is \$13,226.45. The interest computations are contained in the attached sheets labeled as Exhibit B.

10. Interest will continue to accumulate under the Arkansas-

~1983

Carbona formula until such time as the back wages and accumulated interest are paid in full.

OTTAWA SILICA COMPANY
By: FRANK X. FORTESCUE, ESQ.
Brown, McGlynn & Fortescue
500 N. Woodward, Suite 320
Bloomfield Hills, MI. 48013

Respectfully submitted,

FRANCIS X. LILLY
Solicitor of Labor

JOHN H. SECARAS
Regional Solicitor

DAVID WIGHTMAN
Attorney

Attorneys for Raymond J. Donovan,
Secretary of Labor, United States
Department of Labor

~1984

EXHIBIT A

Period	Wages	Vacation	Total
4/1/80-6/30/80	2,168.08 2,168.08		2,168.08
7/1/80-9/30/80	3,490.08	8 hrs. x 6.61 \$52.88	3,542.96
10/1/80-12/31/80	3,694.96 3,694.96		3,694.96
1/1/81-3/31/81	3,742.72		3,742.72
4/1/81-6/30/81	3,801.20 3,801.20		3,801.20
7/1/81-9/30/81	3,859.68	16 hrs. x 7.31 \$116.96	3,976.64
10/1/81-12/31/81	4,072.48		4,072.48
1/1/82-3/31/82	3,075.84		3,075.84
4/1/82-6/30/82	833.04--	56 hrs. x 8.01 \$448.56	1,281.60
TOTAL	\$28,738.08	\$618.40	\$29,356.48

~1985

EXHIBIT B

Back Pay 2nd Quarter 1980 \$21.68.08

3rd Quarter 80	2,168.08	x	91 days	x	.0003333	=	65.758516
4th Quarter 80	2,168.08	x	90 days	x	.0003333	=	65.035895
1st Quarter 81	2,168.08	x	90 days	x	.0003333	=	65.035895
2nd Quarter 81	2,168.08	x	90 days	x	.0003333	=	65.035895
3rd Quarter 81	2,168.08	x	90 days	x	.0003333	=	65.035895
4th Quarter 81	2,168.08	x	90 days	x	.0003333	=	65.035895
1st Quarter 82	2,168.08	x	90 days	x	.0005555	=	108.393159
2nd Quarter 82	2,168.08	x	90 days	x	.0005555	=	108.393159
3rd Quarter 82	2,168.08	x	90 days	x	.0005555	=	108.393159
TOTAL							716.12

Back Pay 3rd Quarter 1980 3542.96

4th Quarter 80	4,032.05	x	91 days	x	.0003333	=	107.45903
1st Quarter 81	4,032.05	x	90 days	x	.0003333	=	106.27817
2nd Quarter 81	4,032.05	x	90 days	x	.0003333	=	106.27817
3rd Quarter 81	4,032.05	x	90 days	x	.0003333	=	106.27817
4th Quarter 81	4,032.05	x	90 days	x	.0003333	=	106.27817
1st Quarter 82	4,032.05	x	90 days	x	.0005555	=	177.13028
2nd Quarter 82	4,032.05	x	90 days	x	.0005555	=	177.13028
3rd Quarter 82	4,032.05	x	90 days	x	.0005555	=	177.13028
TOTAL							1063.96

~1987

Back Pay 4th Quarter 1980 \$3,694.96

1st Quarter	81	3,694.96	x	91 days	x	.0003333	=	112.06924
2nd Quarter	81	3,694.96	x	90 days	x	.0003333	=	110.83771
3rd Quarter	81	3,694.96	x	90 days	x	.0003333	=	110.83771
4th Quarter	81	3,694.96	x	90 days	x	.0003333	=	110.83771
1st Quarter	82	3,694.96	x	90 days	x	.0005555	=	184.72952
2nd Quarter	82	3,694.96	x	90 days	x	.0005555	=	184.72952
3rd Quarter	82	3,694.96	x	90 days	x	.0005555	=	184.72952
TOTAL								998.77

Back Pay 1st Quarter 1981 \$3,742.72

2nd Quarter	81	3,742.72	x	91 days	x	.0003333	=	113.51782
3rd Quarter	81	3,742.72	x	90 days	x	.0003333	=	112.27037
4th Quarter	81	3,742.72	x	90 days	x	.0003333	=	112.27037
1st Quarter	82	3,742.72	x	90 days	x	.0005555	=	187.11728
2nd Quarter	82	3,742.72	x	90 days	x	.0005555	=	187.11728
3rd Quarter	82	3,742.72	x	90 days	x	.0005555	=	187.11728
TOTAL								899.41

Back Pay 2nd Quarter 1981 \$3801.20

3rd Quarter	81	3,801.20	x	91 days	x	.0003333	=	115.29153
4th Quarter	81	3,801.20	x	90 days	x	.0003333	=	114.02459
1st Quarter	82	3,801.20	x	90 days	x	.0005555	=	190.04099
2nd Quarter	82	3,801.20	x	90 days	x	.0005555	=	190.04099
3rd Quarter	82	3,801.20	x	90 days	x	.0005555	=	190.04099
TOTAL								799.44

~1988

Back Pay 3rd Quarter 1981 \$3,976.64

4th Quarter	81	3,976.64	x	91 days	x	.0003333	=	120.61268
1st Quarter	82	3,976.64	x	90 days	x	.0005555	=	198.81211
2nd Quarter	82	3,976.64	x	90 days	x	.0005555	=	198.81211
3rd Quarter	82	3,976.64	x	90 days	x	.0005555	=	198.81211

TOTAL 717.05

Back Pay 4th Quarter 1981 \$4,072.48

1st Quarter	82	4,072.48	x	91 days	x	.0005555	=	205.86590
2nd Quarter	82	4,072.48	x	90 days	x	.0005555	=	203.60363
3rd Quarter	82	4,072.48	x	90 days	x	.0005555	=	203.60363

TOTAL 613.07

~1989

Back Pay 1st Quarter 1982 \$3,075.84

2nd Quarter 82 3,075.84 x 91 days x .0005555 = 155.48524

3rd Quarter 82 3,075.84 x 90 days x .0005555 = 153.77662

TOTAL 309.26

Back Pay 2nd Quarter 1982 \$1,281.60

3rd Quarter 82 1,281.60 x 91 days x .0005555 = 64.78

Back Pay \$29,356.48

4th Quarter 82 29,356.48 x 90 days x .0005555 = 1,467.6772

1st Quarter 83 29,356.48 x 90 days x .0004444 = 1,174.1417

2nd Quarter 83 29,356.48 x 90 days x .0004444 = 1,174.1417

3rd Quarter 83 29,356.48 x 90 days x .0003055 = 807.1564

4th Quarter 83 29,356.48 x 90 days x .0003055 = 807.1564

1st Quarter 84 29,356.48 x 90 days x .0003055 = 807.1564

2nd Quarter 84 29,356.48 x 90 days x .0003055 = 807.1564

TOTAL 7,044.59