



Thereafter, on July 11, 1983, a new partnership agreement was executed, creating another business entity named D & R Contractors with three of the original nine partners (Ron Perkins, Ronnie Siler, and Tony Lambdin). A third partnership, D & R Contractors, commenced business on August 29, 1983, and included the same three original partners.

In Munsey v. Smitty Baker Coal Co., Inc., et al., supra, the Commission applied the criteria set forth in EEOC v. McMillan Bloedel Containers, Inc., supra, in resolving the question of successorship. Those criteria are as follows: (1) whether the successor company had notice of the charge, (2) the ability of the predecessor to provide relief, (3) whether there has been a substantial continuity of business operations, (4) whether the new employer uses the same plan, (5) whether he uses the same or substantially the same work force, (6) whether he uses the same or substantially the same supervisory personnel, (7) whether the same jobs exist under substantially the same working conditions, (8) whether he uses the same machinery, equipment, and methods of production, and (9) whether he produces the same product.

The undisputed evidence shows that the purported managing partner and a partner common to all three partnerships, Ron Perkins, has had notice of discrimination proceedings brought by the Complainant Lonnie Jones as early as May 1983 when Jones filed his first complaint with the Federal Mine Safety and Health Administration. Subsequently, Mr. Jones moved to join D & R Contractors in these proceedings before this Commission on August 2, 1983. Since the law of Kentucky charges each partner with the knowledge of any one of its partners regarding partnership affairs, it is apparent that the "partners" in the successor partnerships, D & R Contractors, had knowledge through Ron Perkins of the continuing litigation concerning Lonnie Jones. See Kentucky Revised Statutes, section 362.205.

The evidence also shows that Jones would have continued working for the successor partnerships had he not been unlawfully discharged and the evidence shows that the successor partnerships did continue in business. Accordingly, full relief would not be available to the Complainant without the joinder of the successor partnerships. I also observe that the subsequent partnerships continued mining operations under the same name in another mine owned by Mingo Coal Company with three of the original partners. The undisputed evidence also shows that the subsequent partnerships continued to produce coal using machinery leased, as before, from the Mingo Coal Company.

Within this framework I conclude that, indeed, the subsequent partnerships were successor business entities and therefore were also liable for damages sustained by Mr. Jones in connection with his unlawful discharge on April 25, 1983. Munsey, r a. Accordingly, the successor partnerships are liable for the pay Mr. Jones could have earned working for these successor entities. It is not disputed that for the relevant period, July 11, 1983, through September 17, 1983, Jones would have earned **\$3,059.00**. Jones earned \$180 during this period in other work and this is deductible from the back pay award. The undisputed calculation of interest due on the back pay award through September 30, 1984, is \$540.05.

#### Expenses

The parties have stipulated that Mr. Jones expended \$90 in witness fees. The evidence further shows that Jones traveled 430 miles in connection with the preparation of the case and attendance at hearings. Applying the applicable mileage rate of **20.5¢** per mile, he is entitled to \$88.15 in mileage fees. No interest has been requested on these expenses.

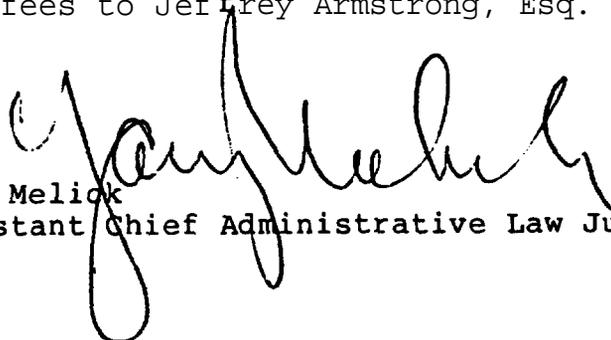
#### Attorney Fees

Respondent does not dispute the reasonableness of the attorney fees sought by counsel for Mr. Jones, but contends that fees attributable to the period before the joinder of D & R Contractors in these proceedings are not chargeable to D & R Contractors. To the extent that counsel for Mr. Jones did in fact cause delay in these proceedings by his failure to have joined D & R Contractors in the initial complaint, there is some merit to the contention. I observe, however, that the time involved for the preparation of trial in this case would not have differed significantly whether or not D & R Contractors had been joined initially. Under the circumstances, I have made a downward adjustment of 6 hours in the fee application attributable only to the time reasonably spent in matters specifically related to the late joinder of D & R Contractors.

Accordingly, I find that counsel devoted 105 hours to the proceedings in this case. Utilizing the uncontested proposed rate of \$65 per hour, I conclude that counsel for Mr. Jones is to be awarded \$6,825 in attorneys fees. No further adjustments are warranted. Copeland v. Marshall, 641 F.2d 880 (D.C. Cir. 1981).

ORDER

D & R Contractors and Ron Perkins are hereby ordered, jointly and severally, to pay to Lonnie Jones within 10 days of the date of this decision the amount of **\$5,032.55** in back earnings and interest and the amount of \$178.15 in expenses. D & R Contractors and Ron Perkins are further **ordered, jointly** and severally, to pay within 10 days of the date of this decision the amount of **\$6,825.00** in attorney fees to Jeffrey Armstrong, Esq.

  
Gary Melick  
Assistant Chief Administrative Law Judge

Distribution:

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