

CCASE:
SOL (MSHA) v. CONSOLIDATION COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
BILLY DALE WISE, AND
LEO E. CONNER,
COMPLAINANTS
v.

DISCRIMINATION PROCEEDINGS
Docket No. WEVA 85-148-D
MSHA Case No. MORG CD 84-16
Docket No. WEVA 85-149-D
MSHA Case No. MORG CD 84-19
Ireland Mine

CONSOLIDATION COAL COMPANY,
RESPONDENT

APPEARANCES: Covette Rooney, Esq., and Linda M. Henry, Esq.,
U.S. Department of Labor, Office of the
Solicitor, Philadelphia, Pennsylvania, for
Complainants;
Karl T. Skrypak, Esq., Consolidation Coal
Company, Pittsburgh, Pennsylvania, for
Respondent

DECISION

Before: Judge Melick

These consolidated proceedings are before me upon the complaints of discrimination by the Secretary of Labor on behalf of Billy Dale Wise and Leo E. Conner under the provisions of section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 810 et seq., the "Act." The individual Complainants allege that they suffered discrimination when the Consolidation Coal Company (Consol) failed to pay them overtime for a 30 minute "lunch period" during the time they participated as section 103(f) representatives of miners with inspectors for the Federal Mine Safety and Health Administration (MSHA). (FOOTNOTE.1) Motions to dismiss filed by Consol on the grounds that the complaints had been untimely

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filed were denied by an interlocutory decision dated May 17, 1985 (Appendix A).

The essential facts in these cases are not in dispute. The individual Complainants, Billy Wise and Leo Conner, were hourly employees at Consol's Ireland Mine regularly employed as a "Longwall Shear Operator" and as a "Longwall Mechanic", respectively. Both jobs were classified at grade 5 and paid \$14.165 an hour in accordance with the National Bituminous Coal Wage Agreement of 1981 (Wage Agreement).

On Monday, July 16, 1984, Mr. Wise participated as a section 103(f) representative of miners in a close-out conference with an MSHA inspector for 5-1/2 hours. At the completion of this conference Mr. Wise chose not to return to work for Consol (though such work was available) but elected to go on "union business" for the remaining 2-1/2 hours of his shift. While on "union business" the individual is not under the direction or control of the mine operator and, in accordance with the Wage Agreement, is not paid by the operator for such business.

On Thursday, July 19, 1984, Mr. Conner similarly participated as a section 103(f) representative of miners during an inspection with an MSHA inspector for 5-1/2 hours. At the completion of this inspection Mr. Conner similarly chose not to return to work but "went home" for the remaining 2-1/2 hours of his shift.

The Complainants herein were paid for the 5 1/2 hours during which they acted as representatives of miners but claim that they are also entitled to an additional \$10.62 corresponding to the overtime pay given to those employees who, during a particular shift, work through their 30 minute lunch period. They claim that the failure of Consol to pay this amount constitutes an unlawful loss of pay under section 103(f) of the Act and accordingly claim that this was discriminatory under section 105(c)(1) of the Act.

Section 103(f) provides in part that: "such representative of miners who is also an employee of the operator shall suffer no loss of pay during the period of his participation in the inspection made under this subsection." The specific issue before me then is whether the Complainants suffered a loss of pay during the stated periods of their participation as representatives of miners.

Under the Wage Agreement each miner is entitled to a paid 30 minute lunch period during the normal 8 hour "collar

