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SOL (MSHA) v. OSBORNE BROTHERS CONSTRUCTION
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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
ALAN GAUTHIER,
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. WEST 85-46-D

Black Thunder Mine

v.

OSBORNE BROTHERS CONSTRUCTION
INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT AND ORDER

Appearances: Margaret A. Miller, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Complainant;
George E. Powers, Jr., Esq., Godfrey & Sundahl,
Cheyenne, Wyoming.

Before: Judge Lasher

This case arose upon the filing of a complaint by the Secretary in which review of Respondent's allegedly discriminatory discharge of its employee, Alan Gauthier, was requested.

Evaluation of the settlement stipulation submitted by the parties reveals that it proposes an adequate remedy for the alleged infraction as reflected in the agreed-on order which follows. The Secretary as part of the agreement has waived any penalties sought in relation to the controversy in question and the alleged discriminatee, Alan Gauthier, has specifically agreed to the settlement. Accordingly, subject to full execution of the order which follows, the stipulated settlement is approved and this matter is dismissed.

ORDER

(1) Respondent, within 10 days from the date hereof, shall pay Alan Gauthier the sum of \$8,500.00.

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(2) In the event that Respondent returns to the Black Thunder job site within 1-year from the date hereof, it will offer Alan Gauthier reinstatement to the job of heavy equipment operator (the job he held prior to his discharge) at a comparable rate of pay, with the same duties, and without loss of seniority and other benefits. As part of the agreement, Complainant acknowledges that Respondent currently has no plan to return to the Black Thunder site; Respondent has extended no guarantee that it will return to such site.

(3) Respondent shall immediately expunge from Alan Gauthier's employment records any adverse references to his discharge.

Michael A. Lasher, Jr.
Administrative Law Judge