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SOL (MSHA) v. CONSOLIDATION COAL
SOL (MSHA) & P.E. ANDERSON 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 PHILLIP E. ANDERSON, DAVID HODGMAN, RICHARD McDOWELL, GARY WRIGHT, PHILLIP DANFORD, COMPLAINANTS v.	DISCRIMINATION PROCEEDING Docket No. WEVA 85-108-D MSHA Case No. MORG CD 84-12 Pursglove No. 15 Mine
CONSOLIDATION COAL COMPANY, RESPONDENT	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), ON BEHALF OF PHILLIP E. ANDERSON, DAVID HODGMAN, COMPLAINANTS v.	DISCRIMINATION PROCEEDING Docket No. WEVA 85-109-D MSHA Case No. MORG CD 84-13 Pursglove No. 15 Mine
CONSOLIDATION COAL COMPANY, RESPONDENT	

DECISIONS APPROVING SETTLEMENTS

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern complaints of alleged discrimination filed by the complainants against the respondent pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. Docket No. WEVA 85-108-D concerns a complaint by five miners alleging that the respondent required them to work in unsafe conditions and threatened to discharge them if they refused to work or complained to their union safety committee about the

alleged unsafe working conditions. Docket No. WEVA 85-109-D concerns a separate complaint filed by two of the five miners alleging that the respondent retaliated against them for filing safety complaints, and for filing the discrimination complaint which is the subject of WEVA 85-108-D. The two miners (Anderson and Hodgman), allege that as a result of their complaints, they were given "unsatisfactory work slips." They conclude that this action by the respondent was in retaliation for their safety complaints.

These proceedings were scheduled for hearings on the merits in Pittsburgh, Pennsylvania, on October 22, 1985. However, by joint motion filed with me on September 16, 1985, the parties propose to settle the cases.

Discussion

The parties state that the basis for the proposed settlement is the respondent's expungement of the employment record of complainants Hodgman and Anderson of the unsatisfactory performance notices and reference thereto in exchange for the dismissal of these cases, including the requests for assessment of civil penalties. Respondent has agreed to compromise the matters to avoid the time, expense, and risks attending litigation, including potential civil penalties, but makes no admission of violation of section 105(c).

MSHA states that in agreeing to forego the assessment of civil penalties, it considered, in addition to the time, expense, and risks of litigation, the fact that the respondent paid without contest civil penalty assessments of $2,950, for the withdrawal orders issued for conditions from which the complaint in WEVA 85-108-D arose. Further, MSHA points out that section 105(c) of the Act is uniquely designed to benefit individual miners, and that in establishing this security for individuals, the cause of health and safety in the workplace is satisfied. MSHA concludes that the proposed settlement of these cases satisfies the individual needs and thereby promotes the objectives of section 105(c) specifically and the Act generally.

MSHA's counsel states that with one exception, he has discussed the settlement with each individual complainant, and none has expressed any objection. The one exception concerns complainant Gary Wright. Counsel asserts that Mr. Wright has been inaccessible, but that he intends to communicate with Mr. Wright in writing and will furnish him with a detailed explanation of the settlement rationale. Counsel also asserts that MSHA's Morgantown special investigator has been requested to communicate the settlement terms to Mr. Wright, and that complainant David Hodgman has assured him that he will explain the agreement to Mr. Wright.

With regard to Mr. Wright, MSHA's counsel states that it is unlikely that he would have any objections to the terms of the agreement. Counsel points out that while the complainants were collectively part of a single action, the alleged retaliation, if any, was directed only to Messrs. Hodgman and Anderson, who claimed they were exposed to possible future discharge. Taken in context, counsel suggests that Mr. Wright would be hard pressed to justify any objection in the face of agreement among his comrades. Moreover, counsel points out that there exist no superior safety claims or financial losses that should have been taken into account.

Finally, MSHA's counsel states that the dangers perceived by the complainants in WEVA 85-108-D were made the subject of uncontested unwarrantable failure withdrawal orders, and that the respondent has paid the civil penalty assessments that resulted from those orders. Under the circumstances, counsel concludes that the likelihood of a repetition of the alleged discrimination appears slight and that the relief sought by the complainants and the interest in punishment by means of civil penalties are far outweighed by the elimination of the threat to employment without the necessity of litigation and its attendant risks.

In Secretary of Labor, ex rel. James M. Clarke v. T.P. Mining, Inc., 7 FMSHRC 989, July 2, 1985, the Commission stated that when seeking dismissal of a discrimination complaint in settlement of the case, the Secretary shall include in the dismissal motion and underlying settlement an express reference to the parties' agreement concerning the civil penalty. This requirement has been met in this case. The Commission also noted other cases before the Commission in which its judges have approved settlement dispositions and dismissal of discrimination cases despite the fact that neither the settlement agreement nor the motion to dismiss referenced the civil penalty aspects of the complaint. The Commission also took note of one prior decision where a judge dismissed a discrimination complaint where the settlement agreement expressly stated that the Secretary would not seek a civil penalty assessment for a violation of section 105(c) and that nothing contained in the agreement would be deemed an admission by the operator of a violation of the Act.

ORDER

After careful consideration of the arguments in support of the motion to approve the proposed settlement, I conclude

and find that the proposed settlement disposition of these cases is reasonable and in the public interest. Accordingly, it is APPROVED, and the Secretary's motion to dismiss the complaints IS GRANTED.

George A. Koutras
Administrative Law Judge