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SOL (MSHA) v. SILVER STATE MINING
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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
GEORGE M. SWANK,
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. WEST 85-31-DM

MSHA Case No. 84-14

Ironclad Mine

v.

SILVER STATE MINING COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Carlson

The parties, through counsel, have filed a stipulation which settles all matters at issue in this discrimination proceeding.

It should be noted that the original complaint in this case was filed by the alleged discriminatee, pro se. Later, the Secretary of Labor, who had originally declined to prosecute on behalf of the complaining miner, was granted leave to intervene under Commission Rules 2700.4(a) and (c). Rick P. Sauer, Esq., who filed his entry of appearance as private counsel for the complainant after the filing of the original pro se complaint, but before the Secretary's intervention, did not withdraw after the Secretary's intervention, and participated in the settlement negotiations and signed the agreement.

The specifics of the agreement are as follows:

1. Respondent hereby agrees to compensate George M. Swank in the amount of \$2,100.00 for loss of back wages and other expenses from his termination.
2. Respondent hereby agrees to waive payment of any and all loans made by Respondent to George M. Swank prior to his termination.
3. In the interest of achieving an expeditious disposition of Mr. Swank's claims against Respondent, the Secretary of Labor proposes no penalty be assessed against Respondent.

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4. The parties recognize that George M. Swank, through his private attorney, may have other claims against the Respondent arising from the same facts which gave rise to the discrimination action, and that those other claims may be settled in whole or in part by agreements between Mr. Swank, acting through his private attorney, and respondent. However, the parties agree that no such agreement will be binding on the Secretary and that the above agreement represents the sole and entire agreement to which the Secretary is a party in this action.

5. Each party agrees to bear its own costs and expenses.

Having considered the agreement, and the contents of the file, I conclude that the proposed settlement is appropriate and should be approved in all respects. Accordingly, respondent Silver State Mining Company shall pay to George M. Swank, within 40 days of the date of this decision, the sum of \$2,100.00, whereupon all other provisions of the settlement agreement shall be deemed effectuated and this proceeding shall be considered terminated.

SO ORDERED.

John A. Carlson
Administrative Law Judge