

CCASE:  
ROCCO CURIO V. KEYSTONE COAL  
DDATE:  
19860108  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

ROCCO CURCIO,  
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. PENN 84-208-D

KEYSTONE COAL MINING  
CORPORATION,  
RESPONDENT

Emilie No. 1 Mine

SUPPLEMENTAL DECISION

Appearances: Earl R. Pfeffer, Esq., Washington, D.C.,  
for Complainant;  
William M. Darr, Esq., Indiana, Pennsylvania,  
for Respondent.

Before: Judge Broderick

I issued a decision on the merits in this proceeding on September 27, 1985. In that decision I found that Complainant established that he had been discriminated against by Respondent in violation of section 105(c) of the Federal Mine Safety and Health Act of 1977 (Act). As part of the relief, I ordered Respondent to pay the costs and expenses (including attorney's fees) reasonably incurred by Complainant in connection with the institution and prosecution of this proceeding. I directed counsel to confer and attempt to agree on the amount due Complainant as costs and expenses. Complainant has submitted a statement of attorneys fees in the total amount of \$5407.49. Of this amount \$3671.87 is claimed for Earl R. Pfeffer, Esq., \$120. is claimed for Mary Lu Jordan, Esq., and \$1615.62 is claimed for the United Mine Workers of America (UMWA), by whom Pfeffer and Jordan are employed. In addition, the UMWA claims \$370.65 for the cost of the attorney's hotel, per diem and transportation expenses and for the transcript of the hearing. Respondent does not object to these amounts.

Complainant also has filed a claim in the amount of \$294.72 for expenses incurred by Local 1412, UMWA in connection with this proceeding. Respondent objects to this claim.

Section 105(c)(3) of the Act provides that all costs and expenses determined to have been reasonably incurred in connection with the institution and prosecution of the proceeding shall be assessed against the person found to have violated section 105(c).

Local 1412 apparently paid Complainant \$25.00 for a two hour meeting he had with his counsel on December 12, 1984, the day prior to the hearing herein. The amount is apparently based on Complainants hourly rate of pay (12.50). There is no showing or claim that he actually lost time or wages as a result of the meeting. Therefore, it is not shown to be an expense reasonably incurred in this proceeding, and I reject the claim. However, I will allow the claim for mileage and parking on that day in the total amount of \$17.00. The Local Union also apparently paid claimant \$106.78 for his attendance at the hearing on December 13, 1984 (8 hours at \$13.348 per hour. The discrepancy in the hourly rate is not explained). Again, there is no showing or claim that he actually lost wages in the amount claimed and I reject the claim. The Local Union claims \$115.32 for witness Jerry Duncan who testified at the hearing (8 hours at \$14.415 per hour). The reasonable expense for a witness at a hearing is the witness fee fixed by 28 U.S.C. 1821, and I will allow reimbursement for the statutory witness fee (\$30 per day) and the mileage and parking expenses (\$17.00). Claimant seeks reimbursement to the Local Union for a one half hour meeting of Jerry Duncan and Jim Bonelli with MSHA on July 23, 1984 in the total amount of \$13.62. The complaint was filed with the Commission on August 30, 1984. The expense is not explained and cannot be said to have been incurred in connection with the present proceeding. It is denied.

Therefore, IT IS ORDERED that Respondent shall pay the following costs and expenses in satisfaction of paragraph 3 of the Relief in my decision issued September 27, 1985:

- |                             |            |
|-----------------------------|------------|
| 1. To Earl R. Pfeffer, Esq. | \$3,671.87 |
| 2. To Mary Lu Jordan, Esq.  | 120.00     |
| 3. To UMWA                  | 2,086.27   |
| 4. To Local 1412, UMWA      | 64.00      |

James A. Broderick  
Administrative Law Judge