

CCASE:  
SOL (MHSA) V. EISENMAN CHEMICAL  
DDATE:  
19860123  
TTEXT:

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

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. CENT 85-47-DM  
Docket No. CENT 85-68-DM

v.

MD 85-04

EISENMAN CHEMICAL COMPANY,  
RESPONDENT

Corpus Christi Mine

DECISION APPROVING SETTLEMENT

Appearances: Jack F. Ostrander, Esq., Office of the Solicitor,  
U.S. Department of Labor, Dallas, Texas,  
for Complainant  
Steven R. Baker, Esq., Houston, Texas,  
for Respondent

Before: Judge Maurer

STATEMENT OF THE CASE

This is a consolidated discrimination proceeding initiated by the complainant against the respondent pursuant to Section 105(c) of the Federal Mine Safety and Health Act of 1977, charging the respondent with unlawful discrimination against Mr. Juan Gilberto Pena, for exercising certain rights afforded him under the Act. A hearing in this matter was convened in Corpus Christi, Texas on December 18, 1985. At that time the parties advised me of a proposed settlement disposition of the dispute.

Counsel for the Secretary read the settlement into the record as follows:

MR. OSTRANDER: Comes now the Secretary of Labor, Complainant, and Eisenman Chemical Company, Respondent in the above styled case, and agree to settle this case on the basis of the following stipulations:

A. Respondent agrees to pay Complainant, Juan G. Pena, the sum of \$13,000 in full and complete satisfaction of back wages due to Complainant under Section 105(c)

of the Act, without admitting a violation of the Act.

- B. Secretary agrees to waive a civil penalty in this case upon payment of the sum of \$13,000 to Juan G. Pena.
- C. the intent of this agreement is to settle all claims Complainant may be due under the provisions of Section 105(c) of the Act.
- D. Complainant waives any right to reinstatement and any right to reapply for a position.
- E. Eisenman Chemical will remove from the personnel file any references of Juan G. Pena's termination, including the letter of discharge. Such documents and/or references, however, may become a part of any relevant litigation file, and this agreement in no way prejudices Respondent's rights to use any such documents and/or references in any relevant litigation or investigation.
- F. Respondent will give Juan G. Pena neutral references in the future.

#### CONCLUSION

After careful review and consideration of the settlement terms and conditions proposed by the parties in this proceeding, I conclude and find that it reflects a reasonable resolution of the complaint. Further, since it seems clear to me that all the parties, including Mr. Pena personally, are in accord with the agreed upon disposition of the complaint, I see no reason why it should not be approved.

#### ORDER

The proposed settlement is APPROVED. Respondent IS ORDERED AND DIRECTED to fully comply with the terms of the agreement.

~144

Upon full and complete compliance with the terms of the agreement, this matter is dismissed.

Roy J. Maurer  
Administrative Law Judge