

CCASE:
SOL (MSHA) V. EMERY 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
MARK ADAMS, ET AL,
COMPLAINANTS

DISCRIMINATION PROCEEDING
Docket No. WEST 80-489-D(B)
Deseret Mine

v.

EMERY MINING CORPORATION,
RESPONDENT

DECISION

Appearances: James H. Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado, for
Complainants; Thomas C. Means, Esq., Crowell &
Moring, Washington, D.C., for Respondent.

Before: Judge Morris

This case arises under the Federal Mine Safety and Health
Act of 1977, 30 U.S.C. 801 et seq., and it involves the
interpretation of sections 115 and 105(c) of the Act.

After a hearing before the undersigned the Secretary was
granted leave to amend his complaint to add additional
complainants. The undersigned severed the amended complaint and
designated all subsequent matters relating to the amended
petition as "Secretary of Labor, Mine Safety and Health
Administration on Behalf of Mark Adams, et al, Complainants, v.
Emery Mining Corporation, Respondent, Docket No. WEST
80-489-D(B)." In the interim Docket No. WEST 80-489-D(A) was
appealed to the Commission.

After considering the issues, the Commission ruled that
Emery violated section 105(c) of the Act when, after hiring the
complainants as new miners, it nevertheless refused to compensate
them for 32 hours of training. The miners had to obtain such
training because of respondent's hiring practices, 5 FMSHRC 1391
(1983).

Subsequently, respondent appealed the Commission decision to
the United States Court of Appeals for the Tenth Circuit where it
was docketed as case number 83-2017. In addition, the parties
stipulated that the instant case would be determined by the
ruling of the appellate court. In view of the stipulation of the
parties, the undersigned stayed further proceedings in the
captioned case pending a ruling from the appellate court.

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On January 31, 1986, the Court issued its decision. The Court held that the Commission and its administrative law judge erred when they found that Emery violated the Act by refusing to pay its newly hired employees for back wages, tuition and related expenses they had incurred in receiving 32 hours of training before being employed by respondent. Specifically, the Court ruled that none of the complainants were "miners" under the Act or employed by respondent at the time they took their training. Further, it was the view of the Court that the statute was clear on its face. In sum, the Court declined to enforce the Commission order.

Respondent thereafter filed a motion for summary judgment on the captioned case. The motion is within the stipulation of the parties.

Thereafter the undersigned dissolved the stay of the instant proceedings. The Secretary, in his response to the motion for summary judgment, concurs that Emery's motion should be granted.

On the basis of the decision of the United States Court of Appeals for the Tenth Circuit in Docket No. 83Ä2017, the pleadings and the stipulation of the parties, I enter the following:

ORDER

1. Respondent's motion for summary judgment is granted.
2. The discrimination complaint is dismissed.

John J. Morris
Administrative Law Judge