

CCASE:
SOL (MSHA) V. RAVEN RED ASH 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
EARL KENNEDY,
LARRY COLLINS,
COMPLAINANTS

DISCRIMINATION PROCEEDING
Docket No. VA 85-32-D
MSHA Case No. NORT CD 84-7
Mine No. 1

v.

RAVEN RED ASH COAL
CORPORATION,
RESPONDENT

AMENDED DECISION

Appearances: Sheila K. Cronan, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for the Complainants;
Daniel R. Bieger, Esq., Copeland, Molinary &
Bieger, Abingdon, Virginia, for the Respondent.

Before: Judge Koutras

Statement of the Case

This proceeding concerns a discrimination complaint filed by the complainants against the respondent pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977. The complainants contended that they were discharged from their employment with the respondent because of their refusal to work under unsupported roof.

On April 7, 1986, I issued my decision in this case. I concluded and found that the complainants were fired by the respondent because of their refusal to work under unsupported roof. I further concluded and found that the work refusal was protected activity under the Act, and that their discharge by the respondent for this reason constituted a violation of section 105(c)(1) of the Act. The respondent was ordered to pay

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complainant Earl Kennedy the sum of \$2,170 in backpay, less any amounts normally withheld pursuant to state and Federal law, with interest at 9 percent until paid. The respondent was ordered to pay complainant Larry Collins the sum of \$10,600, less any amounts normally withheld pursuant to state and Federal law, with interest at 9 percent until paid. I also assessed a civil penalty in the amount of \$1,000, for the violations in question, and entered an order requiring the respondent to remit payment of same to MSHA within 30 days.

By motion filed with me on April 23, 1986, MSHA requested reconsideration of my decision of April 7, 1986, to delete the reference to the 9 percent interest rate, and to require the respondent to pay interest on the backpay awards in accordance with the Commission-approved formula in Secretary ex rel. Bailey v. Arkansas-Carbona Co., 5 FMSHRC 2042, 2050-2054 (Dec. 1983). MSHA also requested further leave to submit a statement stating the total amount of interest due on the back wage award to each complainant, and suggested that the respondent be given 10 days within which to file a reply. MSHA's motion was granted, and on May 2, 1986, I issued an Amended Decision affording MSHA an opportunity to file its requested monetary relief on behalf of the complainants, and the respondent was afforded an opportunity to file a reply.

By letter and enclosures filed with me on June 2, 1986, MSHA submitted its backpay and interest summaries supported by detailed computations for both complainants. According to these computations, complainant Larry Collins is due backpay in the amount of \$10,600, with interest computed through June 2, 1986, in the amount of \$1,640.57, for a total of \$12,240.57. Complainant Earl Kennedy is due backpay in the amount of \$2,170, with interest computed through June 2, 1986, in the amount of \$403.29, for a total of \$2,573.29. MSHA's computations also reflect that interest will continue to accrue to Mr. Collins through June 30, 1986, in the amount of \$2.94 daily, and to Mr. Kennedy in the amount of .60 daily.

The respondent failed to respond to MSHA's motion of April 23, 1986, for an amended decision, and it also failed to reply to MSHA's submissions concerning the relief due the complainants.

ORDER

1. My decision of April 7, 1986, as amended on May 2, 1986, is further amended to incorporate the aforementioned monetary relief requested by MSHA on behalf of complainants Earl Kennedy and Larry Collins.

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2. Respondent IS ORDERED to pay to the complainant Earl Kennedy the sum of \$2,170, less any amounts normally withheld pursuant to state and Federal law, with interest computed through June 2, 1986, in the amount of \$403.29, for a total of \$2,573.29. Interest will continue to accrue to Mr. Kennedy in the amount of .60 daily, through June 30, 1986, and thereafter in any amount computed in accordance with the Arkansas-Carbona Co. formula.

3. Respondent IS ORDERED to pay to the complainant Larry Collins the sum of \$10,600, less any amounts normally withheld pursuant to state and Federal law, with interest computed through June 2, 1986, in the amount of \$1,640.57, for a total of \$12,240.57. Interest will continue to accrue to Mr. Collins in the amount of \$2.94 daily, through June 30, 1986, and thereafter in any amount computed in accordance with the Arkansas-Carbona Co. formula.

4. Respondent IS ORDERED to pay a civil penalty assessment in the amount of \$1,000 for the violations in question.

5. All payments required to be made by the respondent in accordance with my decision, as amended, shall be made within thirty (30) days of the date of this amended decision.

George A. Koutras
Administrative Law Judge