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SOL (MSHA) V. WEST FORK 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 FRANK WILLIAMS
AND BUDDY R. MAYNARD,
COMPLAINANTS

DISCRIMINATION PROCEEDING

Docket No. KENT 86-28-D

PIKE CO 85-14

No. 1 Mine

v.

WEST FORK COAL COMPANY, A
CORPORATION,
RESPONDENT

DECISION

Before: Judge Fauver

This proceeding was brought by the Secretary in behalf of Frank Williams and Buddy R. Maynard for reinstatement and other relief under section 105(c) of the Federal Mine Safety and Health Review Act, 30 U.S.C. 801, et seq., based upon an alleged discriminatory discharge, and for a civil penalty under section 110(i) of the Act for such violation.

Respondent ceased all operations in October, 1985, and filed a petition for bankruptcy on May 19, 1986, in the United States Bankruptcy Court, Western District of Virginia.

The above parties and the Trustee in Bankruptcy have moved to settle this case by an order for certain limited relief and withdrawal of the prayer for civil penalty, on the grounds of inactivity and anticipated dissolution of Respondent and the futility of the imposition of a civil penalty. It is expected that a claim will be filed in the bankruptcy proceeding based upon the order in this case.

I have reviewed the representations and documentation submitted, and conclude that the proposed settlement is consistent with the purposes of the Act. Accordingly, the motion to approve the settlement will be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this proceeding.

2. Respondent violated section 105(c) of the Act by discriminatorily discharging Frank Williams and Buddy R. Maynade from its No. 1 Mine on May 31, 1985.

3. The Secretary is entitled to an order for permanent reinstatement of Frank Williams and Buddy R. Maynard in Respondent's employ with full restoration of their employment status and rights, including seniority and back pay, retroactive to May 31, 1985, with interest (computed in accordance with the interest formula reported in the Commission's decisions) from that date until payment is made.

ORDER

WHEREFORE IT IS ORDERED that Respondent shall offer permanent reinstatement to Frank Williams and Buddy R. Maynard, within 30 days of this Decision, with full restoration of their employment status, including retroactive seniority and backpay.

4. Based upon the approval of the above settlement, the hearing scheduled for July 8, 1986, is CANCELLED and these proceedings are CONCLUDED.

William Fauver
Administrative Law Judge