

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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AUG 6 1986

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 86-93-D
ON BEHALF OF	:	MSHA Case No. BARB CD 85-52
CHARLES BALL,	:	
Complainant	:	No. 37 Mine
v.	:	
	:	
ARCH OF KENTUCKY, INC.,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This proceeding concerns a complaint of alleged discrimination filed by the Secretary of Labor on behalf of Charles Ball against the respondent pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. The complaint alleges that on or about June 6, 1985, the complainant was discriminated against and suspended by the respondent because he had complained to the respondent about safety violations and refused to continue to work under certain alleged existing hazardous conditions. The matter was scheduled for hearing in Duffield, Virginia, on August 26, 1986.

On August 4, 1986, the parties filed a motion for my approval of a proposed settlement of the case. Counsel for both parties, including the complainant Charles Ball, have executed the proposed settlement, the terms of which are in pertinent part as follows:

1. Respondent agrees to pay to Mr. Charles Ball wages in the amount of \$534.20 representing wages he would have earned had he not been placed on suspension for 3 days without pay. In addition to this, respondent agrees to make appropriate

adjustment in payment of any benefits which may have accrued to Mr. Ball during the period of 3 days during which he was subject to suspension without pay on or about June 6, 1985, including but not exclusively pension and welfare benefits.

2. Respondent agrees to remove any references to any derogatory comments about **the suspension** of Mr. Ball on or about June 6, 1985, from Mr. Ball's personnel and company records.

3. In light of the difficulties and contingencies necessarily attendant to litigation of the subject case together with the complex factual disputes requiring many witnesses and the minimal nature of the economic loss to the complainant which will be entirely recompensed as a result of this settlement, the parties agree that the proposed settlement in this case is appropriate in consideration of all the circumstances.

4. The Secretary recognizes that satisfaction of the miner's interests is paramount to the imposition of a discrimination civil money penalty. The miner's interests in this case are well served by the settlement in which he recovers lost wages and has all adverse references to the circumstances involved in his suspension removed from his employment record. The Secretary agrees to waive the **proposed discrimination** civil penalty because such a waiver is necessary to achieve a prompt and favorable disposition of the miner's claim. The Secretary asserts that the respondent has no known history of previous violations of section 105(c) of the Act.

5. In consideration of the willingness of **the** respondent to resolve the claim quickly by payment of restitution to the complainant and the willingness of the respondent to take what other action is necessary to make the complainant whole, the Secretary agrees to waive imposition of any civil penalty. The sum being advanced by the respondent to the benefit of the miner is such that all purposes which would be served by a civil penalty assessment in this case are satisfied. Since section 105(c) of the Act is uniquely designed to benefit individual miners

as well as the public interests by restitution to those affected by violations of section 105(c) of the Act, the Secretary believes that such purposes are fulfilled in this case by the settlement terms.

6. It is the parties' belief that approval of this settlement is in the public interest and will further the intent and purpose of the Federal Mine Safety and Health Act of 1977.

7. Each party agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

Conclusion

After careful review and consideration of the settlement terms and conditions executed by the parties in this proceeding, including Mr. Ball, I conclude and find that it reflects a reasonable resolution of the complaint filed by MSHA on Mr. Ball's behalf. Since it seems clear to me that all parties 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 forthwith with the terms of the agreement. Upon full and complete compliance with the terms of the agreement, this matter is dismissed. The scheduled hearing is cancelled.


George A. Koutras
Administrative Law Judge

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