

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

AUG 261986

FRANK McCOART, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. KENT 86-63-D
ELM COAL COMPANY, : CD 86-05
Respondent : No. 2 UG Mine

DECISION APPROVING SETTLEMENT

Appearances: Frank McCoart, Van Lear, Kentucky, pro se;
Michael J. Schmitt, Esq., Wells, Porter,
Schmitt & Walker, Paintsville, Kentucky,
for Respondent.

Before: Judge Maurer

Statement of the Case

This is a 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. McCoart for exercising certain rights afforded him under the Act. A hearing in this matter was convened in Prestonsburg, Kentucky, on August 5, 1986. After commencing his case-in-chief, Mr. McCoart moved for a continuance so that he might obtain counsel to assist him in preparing and presenting his claim. I granted this motion over objection of respondent's counsel and the hearing was continued at that point.

Subsequently, the parties have jointly proposed a settlement by a written motion to approve settlement filed on August 8, 1986. That proposal contemplates a dismissal of the complainant's claim against the respondent with prejudice upon the following terms and conditions:

(1) The respondent shall and has purged the complainant's personnel file of all reprimands, warnings and disciplinary actions so that such records will not reflect adversely upon the complainant and inhibit his ability to obtain future employment as a coal miner.

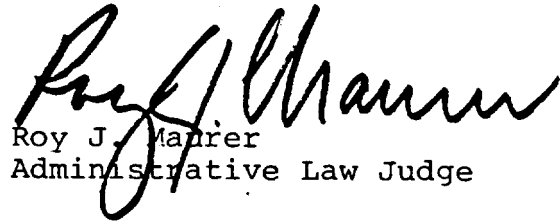
(2) The respondent has agreed to pay and has paid to the complainant the sum of **\$3,000.00** in complete and total settlement of all of complainant's claims for monetary relief (backpay), for reinstatement and for all claims whatsoever.

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. **McCoart** 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. Upon full and complete compliance with the terms of the agreement, this matter-is DISMISSED.


Roy J. Maurer
Administrative Law Judge

Distribution:

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