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SOL (MSHA) V. EMERALD MINES
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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),
EX. REL. MICHAEL HOGAN
AND ROBERT VENTURA,
COMPLAINANTS

DISCRIMINATION PROCEEDING

Docket No. PENN 83-141-D
MSHA Case No. PITT CD 83-3

Emerald No. 1 Mine

v.

EMERALD MINES CORPORATION,
RESPONDENT

SUPPLEMENTAL DECISION AND ORDER

Before: Judge Koutras

Statement of the Case

On July 31, 1986, the Commission issued its decision in this matter and reversed my decision of December 20, 1983, dismissing the complaint. Secretary of Labor, et al., v. Emerald Mines Corporation, 8 FMSHRC 1066 (July 1986). At 8 FMSHRC 1075, the Commission noted that "There is no dispute that the five-day suspension of Hogan and Ventura was motivated by the complainants' protected activity," and it remanded the matter to me for determination of appropriate remedies.

In response to my orders issued subsequent to the remand, the parties have filed a stipulation and agreement as to the issues of back pay and other remedies, and they are in pertinent part as follows:

1. The parties agree and stipulate herein as to the appropriate amounts of back pay, hearing and litigation expenses and civil penalties. The parties also agree that this stipulation contains any and all remedies which might be considered appropriate, that no further hearings are necessary in this matter and that an order pertaining to Complainants' remedies may be entered.

2. By entering into this stipulation Emerald does not admit any violation of the Act, that it is liable for any penalties or remedies contained herein, or that Messrs. Hogan and Ventura are entitled to any relief as set forth herein. Emerald fully intends to seek review of the Commission's decision finding it liable for such penalties and remedies and enters into this stipulation principally to expedite that process.

3. Michael Hogan would have earned the following amounts of pay for the days he was suspended from work and for days he sought excusal from work pertaining to the litigation of this matter:

Date	Straight Time	Lunch Overtime	Total
December 28, 1982	38.83	9.96	47.79
December 29, 1982	95.58	8.96	104.54
December 30, 1982	95.58	8.96	104.54
December 31, 1982	95.58	8.96	104.54
January 3, 1983	93.18	8.74	101.92
January 4, 1983	93.18	8.74	101.92
January 11, 1983	93.18	8.74	101.92
August 2, 1983	68.78	9.26	78.04
August 23, 1983	101.98	9.56	111.54
August 24, 1983	101.98	9.56	111.54

4. The total amount of back pay for Mr. Hogan is \$968.29. Total interest on the back pay through October 31, 1986 is \$386.63.

5. In addition, Mr. Hogan incurred expenses of \$42.12 for telephone calls.

6. Mileage expenses for Mr. Hogan would be 92 miles for two trips to Washington, Pennsylvania for the hearing and 26 miles for one trip to Waynesburg, Pennsylvania to meet with the MSHA special investigator. The applicable rate of reimbursement at the time was 20.5 cents a mile for a total mileage expense of \$24.19.

7. Robert Ventura would have earned the following amounts of back pay for the days he was suspended from work and for days he sought excusal from work pertaining to the litigation of this matter:

Date	Straight Time	Lunch Overtime	Total
December 28, 1982	38.83	8.96	47.79
December 29, 1982	95.58	8.96	104.54
December 30, 1982	95.58	8.96	104.54
December 31, 1982	95.58	8.96	104.54
January 3, 1983	93.18	8.74	101.92
January 4, 1983	93.18	8.74	101.92
January 11, 1983	93.18	8.74	101.92
August 2, 1983	80.52	10.37	90.89
August 23, 1983	107.32	10.07	117.39
August 24, 1983	107.32	10.07	117.39

The total amount of back pay for Mr. Ventura is \$992.84. Total interest on the back pay is \$394.93.

8. Mileage expenses for Mr. Ventura would be 60 miles for two trips to Washington, Pennsylvania for the hearing and 50 miles for one trip to Waynesburg to meet with the MSHA special investigator. The applicable rate of reimbursement at the time was 20.5 cents per mile for a total mileage expense of \$22.55.

9. The parties would agree upon civil penalties in the amount of \$100.00.

10. Emerald stipulates that the discipline Mr. Hogan and Mr. Ventura received arising out of this incident will be considered by it to have no future effect and null and void (unless the Commission's decision is reversed by the Circuit Court of Appeals). Emerald will, however, maintain such records of this matter as would be appropriate to any litigation. Any such records will not, however, be contained in the personnel files of Mr. Hogan and Mr. Ventura. The attendance records of each individual will be modified to remove any reference to their suspensions. Emerald also agrees that it will not communicate any information pertaining to the suspensions which Mr. Hogan and Mr. Ventura received and which are the subject of this litigation or any other information pertaining to this litigation to any person who makes inquiry of Emerald concerning employment of Mr. Hogan or Mr. Ventura.

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In view of the fact that the stipulations by the parties included interest computations through October 31, 1986, the parties agreed by letter dated October 30, 1986, that interest accrues on the back pay for Michael Hogan at the rate of \$0.24 a day and the back pay for Robert Ventura at the rate of \$0.25 a day until their awards are paid.

ORDER

In view of the aforesaid stipulations and agreements, IT IS ORDERED THAT:

1. Respondent pay to complainant Michael Hogan back pay in the amount of \$968.29, plus interest in the amount of \$386.63, through October 31, 1986, and interest in the amount of \$0.24 a day thereafter until paid.

2. Respondent pay to complainant Michael Hogan hearing and litigation expenses in the amount of \$42.12 for telephone calls, and \$24.19 for mileage expenses.

3. Respondent pay to complainant Robert Ventura back pay in the amount of \$992.84, plus interest in the amount of \$394.93, through October 31, 1986, and interest in the amount of \$0.25 a day thereafter until paid.

4. Respondent pay to complainant Robert Ventura mileage expenses in the amount of \$22.55.

5. Respondent pay a civil penalty assessment in the amount of \$100 for a violation of section 105(c)(1) of the Act.

6. Respondent will forthwith comply with the requirements of Stipulation No. 10 with respect to the personnel records and other matters stated therein concerning the employment status of Mr. Hogan and Mr. Ventura.

IT IS FURTHER ORDERED that all payments of back pay, interest, and miscellaneous expenses noted above be paid to

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Mr. Ventura and Mr. Hogan within thirty (30) days of the date of this Supplemental Decision and Order, and that respondent remit to MSHA within this same period the sum of \$100 as a civil penalty assessment for the violation in question.

George A. Koutras
Administrative Law Judge