

CCASE:
SOL (MSHA) V. DEE GOLD
DDATE:
19870109
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
JOSEPH E. TIMKO,
COMPLAINANT
v.

DISCRIMINATION PROCEEDING

Docket No. WEST 85-132-DM
MD 85-12

Dee Gold Mine

DEE GOLD MINING COMPANY,
RESPONDENT

DECISION APPROVING SETTLEMENT
AND DISMISSING PROCEEDING

Appearances: Marshall P. Salzman, Esq., Office of the Solicitor,
U.S. Department of Labor, San Francisco,
California,
for Complainant;
Jay W. Luther, Esq., Chickering & Gregory, San
Francisco, California,
for Respondent.

Before: Judge Lasher

The parties reached an amicable resolution of this matter on the first day of a hearing in two matters involving the Dee Gold Mining Company. The terms of the agreement reached between the Secretary on behalf of Joseph P. Timko and the Respondent are that, in return for the payment of \$925.00, less customary and appropriate withholding deductions to be determined by Respondent, Complainant agrees to accept such amount in full satisfaction of all claims made in connection with his proceeding and remedies claimed by him under the Federal Mine Safety and Health Act of 1977, including back pay, reinstatement, and all other remedies contemplated by the Act and legal precedent. The figure, \$925.00, is an approximation of damages sustained by Complainant as a result of the alleged violation.

Complainant has executed a written release of the Respondent Dee Gold Mining Company which is attached to this decision and order approving settlement and made a part hereof.

Respondent's actions executing the settlement and its agreements in connection therewith shall not be construed as an admission of violation of the Federal Mine Safety and Health Act of 1977.

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It was the intent and understanding of both parties hereto that Respondent would, within seven days or as soon thereafter as possible, tender payment of the \$925.00 less appropriate deductions, to counsel for the Secretary, Mr. Marshall Salzman, at this office address. Counsel for the Secretary has now notified me in writing of such payment and acknowledges that I may consider the complaint in this matter to be withdrawn with prejudice to the Complainant to thereafter file any action under Section 105(c), individually, or otherwise.

It is understood that the attached release signed by Joseph P. Timko, relating more generally to the employment relationship between Mr. Timko and Respondent, is broader in scope than the specific jurisdiction afforded under the Act and should not be construed to be limited by any of the specific terms of this order approving settlement. Such release speaks for itself.

The parties are now in compliance with the settlement reached and approved at hearing. Accordingly, this proceeding is dismissed.

Michael A. Lasher, Jr.
Administrative Law Judge

RELEASE OF DEE GOLD MINING COMPANY

Joseph E. Timko, complaining party in that certain matter known as Joseph E. Timko, Complainant, v. Dee Gold Mining Company, Respondent, Docket No. WEST 85-132-DM, MD 85-12, does hereby release, remise, and forever discharge Dee Gold Mining Company, a Nevada general partnership, from any and all claims, demands, liability, indebtedness, causes of action, and claims for relief arising from or in any way related to (a) any and all matters alleged in the above-entitled proceeding; (b) any and all matters involving or related to said Joseph E. Timko's employment by the said Dee Gold Mining Company or the termination of said employment.

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This release is given fully and voluntarily, after consultation with counsel, and Joseph E. Timko warrants that he has full authority to execute this release and accomplish the objects intended thereby, to wit the complete extinguishment of any of the enumerated obligations of Dee Gold Mining Company to Joseph E. Timko. Neither this release, nor the settlement of which it is a part, shall be regarded as an admission of liability on the part of Dee Gold Mining Company, which expressly denies liability to Joseph E. Timko.

Joseph E. Timko waives any and all statutes or case law designed to prevent the enforcement of this release in accordance with its expressed terms.

JOSEPH E. TIMKO