

CCASE:  
RONALD TOLBERT V. CHANEY COAL  
DDATE:  
19870512  
TTEXT:

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

RONALD TOLBERT,  
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. KENT 86-123-D

v.

CHANEY CREEK COAL CORP.,  
RESPONDENT

Dollar Branch Mine AKA  
White Oak Mine

DECISION

Appearances: Tony Opegard, Esq., Appalachian Research and Defense Fund of Kentucky, Inc., Hazard, Kentucky, for Complainant; Thomas W. Miller, Esq., Miller, Esq., Miller, Griffin and Marx, Lexington, Kentucky, for Respondent.

Before: Judge Melick

By decision dated March 16, 1987, Chaney Creek Coal Corporation was found to have discriminated against Ronald Tolbert, in violation of section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(1), the "Act". Based upon that decision, the parties subsequently stipulated damages, costs (except attorney's fees), and interest, through April 8, 1987. It is accordingly established that through that date Ronald Tolbert is entitled to \$13,888 net back pay plus interest of \$564.85. Subsequent to the submission of those stipulations, further delays ensued because of disputes concerning reinstatement and attorney's fees. Accordingly, Mr. Tolbert is also entitled to additional back pay corresponding to any work days missed for failure of Respondent to reinstate him, plus interest computed in accordance with the formula set forth in Secretary v. Arkansas-Carbona Company and Walter, 5 FMSHRC 2042 (1983).

The Complainant also seeks an award of attorneys fees and expenses totalling \$16,900.20 for work through April 8, 1987. Section 105(c)(3) of the Act provides that "[w]hen an order is issued sustaining the Complainant's charges under this subsection, a sum equal to the aggregate amount of all costs and expenses (including attorneys fees) as determined by the Commission to have been reasonably incurred by the miner, applicant for employment, or representative of miners for, or in connection with, the institution and prosecution of such

~930

proceedings shall be assessed against the person committing such violation."

Respondent specifically objects to attorney's fees for certain services which it alleges could have been performed by a nonattorney, paralegal, or paraprofessional, at a lower hourly rate and, in particular, cites time spent interviewing witnesses as an inappropriate function of an attorney. It is well settled, however, that the time an attorney spends on investigating facts is clearly compensable. 1 Court Awarded Attorney's Fees, 16.02(b). There is no evidence, moreover, concerning the availability of paralegals and/or investigators. Respondent's objection in this regard is accordingly rejected.

Respondent also argues that the time spent in trial preparation and in preparing posthearing briefs was excessive. Complainant's counsel in this case did an exceptionally thorough and competent job in preparing and presenting the Complainant's case at trial and preparing his posthearing brief. While this case did not involve novel legal issues, I find that the time devoted by counsel in trial preparation and in the preparation of the brief was not unreasonable or excessive in light of the complex factual nature of the case. Accordingly, I also reject Respondent's contention that excessive time was devoted to these tasks.

Finally, Respondent argues that a telephone call with an employee of the Respondent and with the Solicitor's Office of the Department of Labor were not appropriately charged to this case. In the absence of a specific showing, however, that those telephone calls were not, in fact, related to the case herein, I presume the truthfulness of the application. Under the circumstances, I find the requested attorney's fees and expenses to be appropriate.

#### FINAL ORDER

Chaney Creek Coal Corporation is hereby ORDERED to immediately offer employment to Ronald Tolbert at its former White Oak Mine or at its Chaney No. 3 (Harlan County) Mine at no less than the current rate of pay in effect for the position of serviceman (I do not find reinstatement to the Oneida Mine to be appropriate in light of the unreasonable commutation time of 4 hours). Chaney Creek Coal Corporation is further ORDERED to pay the Complainant within 30 days of the date of this decision, back pay and interest through April 8, 1987, in the amount of \$14,452.85, as well as additional back pay and interest to the date of reinstatement and in accordance with the Commission's decision in Secretary v. Arkansas-Carbona Company and Walter, 5 FMSHRC 2042 (1983). Chaney Creek coal Corporation is further

~931

ORDERED to pay Complainant attorney's fees and expenses of \$16,900.20. It is further ORDERED that the Decision and Final Order in this case be posted at all mines now being operated by Chaney Creek Coal Corporation. This case is also being referred to the Secretary of Labor for the purpose of instituting civil penalty proceedings.

Gary Melick  
Administrative Law Judge