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SOL (MSHA) V. BABCOCK MINING
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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),
ON BEHALF OF ALBERT HALSTEAD,
COMPLAINANT
v.

DISCRIMINATION PROCEEDING

Docket No. WEVA 87-107-D

HOPE CD 87-1

HOPE CD 87-4

BABCOCK MINING CO.;
HENRY MCCOY, INDIVIDUALLY
AND AS OPERATOR OF BABCOCK
MINING CO.; VIRGIL MCMILLION,
INDIVIDUALLY AND AS OPERATOR
OF MCMILLION ENP., INC.,
MCMILLION ENP., INC.,

No. 1 Mine

SUPPLEMENTAL DEFAULT DECISION

Before: Judge Fauver

Pursuant to the Default Decision entered on October 20, 1987, and the affidavits filed with Complainant's proposed order for relief, the following further Findings of Fact, Conclusions of Law and Order are entered herein:

FINDINGS OF FACT

1. Complainant Albert Halstead worked an average of 44 hours per week at Babcock Mining Co., and earned a regular rate of \$10.00 per hour, and an overtime rate of \$15.00 per hour.

2. Mr. Halstead was discriminatorily fired from Babcock Mining Co. on October 4, 1986 and subsequently reinstated on October 9, 1986. Mr. Halstead was again discriminatorily fired from Babcock Mining Co. on October 20, 1986. Babcock Mining Co. ceased operations on December 10, 1986.

3. McMillion Enp., Inc., began operating the subject mine on January 5, 1987. On January 12, 1987, Mr. Halstead was offered a job at McMillion Enp. Inc. McMillion Enp., Inc., ceased operations on February 13, 1987.

4. Between October 20, 1986 and December 10, 1986, and between January 5, 1987 and January 12, 1987, Mr. Halstead earned a total of \$1,081.00 at other jobs.

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CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this proceeding.

2. Respondents violated 105(c) of the Federal Mine Safety and Health Act, 30 C.F.R. 801 et seq. as alleged in this proceeding. They are jointly and severally liable for back pay due Albert Halstead totalling \$3,279.00, together with interest of \$295.11, which has been computed in accordance with the formula set forth in Secretary ex rel. Bailey v. Arkansas Carbona Company, 5 FMSHRC 2042 (1983).

3. Respondents are assessed a civil penalty of \$700.00 for the above violation, and they are jointly and severally liable for such civil penalty.

4. Respondent Babcock Mining Co. is jointly and severally liable with the other Respondents for the above back pay, interest, and civil penalty. However, inasmuch as Babcock Mining Co. has filed for bankruptcy, an order requiring it to make such payments will not be entered in this proceeding.

ORDER

WHEREFORE IT IS ORDERED that:

1. Respondents Henry McCoy, Virgil McMillion and McMillion Enp., Inc., shall pay the above back pay of \$3,279.00 and interest of \$295.11 to Complainant Albert Halstead within 30 days of this Order. If payment is not made within such period, interest on the back pay shall continue to accrue under the formula in the above Arkansas Carbona Company decision until payment in full is made to David Willis.

2. Respondents Henry McCoy, Virgil McMillion and McMillion Enp., Inc., shall pay the above civil penalty of \$700.00 within 30 days of this Order.

William Fauver
Administrative Law Judge