

CCASE:  
SOL (MSHA) (WILLIAM COOK) V. PATTON ROCK  
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MAY 17, 1988

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
ON BEHALF OF  
WILLIAM LEE COOK,  
Complainant  
v.

DISCRIMINATION PROCEEDING  
  
Docket No. SE 88-39-DM  
MSHA Case No. MD 87-22  
  
Patton Quarry

PATTON ROCK PRODUCTS,  
Respondent

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This proceeding concerns a complaint of alleged discrimination filed by the Secretary of Labor on behalf of William Lee Cook against the respondent pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. The complaint alleges that Mr. Cook was discharged from his employment with the respondent because he complained about bad brakes on a front-end loader and threatened to refuse to operate the loader without brakes because he believed it would be unsafe to do so. In addition to Mr. Cook's reinstatement, employee benefits, back pay with interest, and the expungement of the discharge from Mr. Cook's employment records, the Secretary requested a civil penalty assessment of \$1,200 against the respondent for a violation of section 105(c)(1) of the Act.

The respondent filed a timely answer denying any corporate liability and the matter was scheduled for a hearing in Chattanooga, Tennessee on June 7, 1988. However, by motion received on May 12, 1988, the Secretary requests approval of a settlement executed by the parties, including Mr. Cook. The terms of the settlement are as follows:

(1) Respondent will pay to Mr. Cook the sum of \$756.35 in full and complete settlement of the case, which represents net compensation for the period March 7, 1987, to April 13, 1987, (5 weeks) based on a 40 hour week at \$4.50 per hour, plus interest at the rate of 6.13% per annum. Respondent has permanently reinstated Mr. Cook and there is no longer any issue of reinstatement in this case.

(2) Respondent will expunge from the personnel record of Mr. Cook any and all references to his termination from its employ on March 7, 1987, and will not make any adverse comment or recommendation concerning Mr. Cook's employment for the period March 7, 1987, to April 13, 1987, if any inquiries are made.

(3) As part of the settlement, the Secretary agrees to reduce the penalty to \$500.00, taking into account the fact that testimony as to what actually occurred during the events which resulted in Mr. Cook's termination would be at variance, particularly as to the authority of the corporate officer who discharged him, and respondent has acted in good faith in agreeing to settle this claim. The Secretary represents that the respondent has agreed to pay the reduced civil penalty assessment of \$500.

#### Conclusion

After careful review and consideration of the settlement terms and conditions executed by the parties in this proceeding, including Mr. Cook, I conclude and find that it reflects a reasonable resolution of the complaint filed by MSHA on Mr. Cook's behalf. Since it seems clear to me that all parties are in accord with the agreed upon disposition of the complaint, I see no reason why it should not be approved. I also find no reason for not approving the reduction of the civil penalty assessment as proposed by the Secretary.

#### ORDER

The Secretary's motion IS GRANTED and the settlement IS APPROVED. The parties ARE ORDERED to fully comply forthwith with the terms of the settlement. The respondent IS FURTHER

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ORDERED to pay to the Secretary a civil penalty assessment of \$500 for the violation in question, and payment is to be made within thirty (30) days of the date of this decision and order. Upon receipt of payment by the Secretary, and full compliance with the terms of the settlement, this matter is dismissed. The scheduled hearing is cancelled.

George A. Koutras  
Administrative Law Judge

Distribution:

Glenn M. Embree, James L. Stine, Esqs., Office of the Solicitor,  
U.S. Department of Labor, Room 339, 1371 Peachtree Street, N.E., Atlanta,  
GA 30367 (Certified Mail)

Kenneth D. Bruce, Esq., 116 East Patton Avenue, Lafayette, GA 30728  
(Certified Mail)