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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
MICHAEL L. PRICE AND
JOE JOHN VACHA,
COMPLAINANTS

DISCRIMINATION PROCEEDING

Docket No. SE 87-128-D

No. 4 Mine

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT
AND
UNITED MINE WORKERS OF
AMERICA (UMWA),
INTERVENOR

SUPPLEMENTAL DECISION

Appearances: Frederick W. Moncrief, Esq., and Thomas A. Mascolino, Esq.,
Office of the Solicitor, U.S. Department of Labor, Arlington,
Virginia, for the Secretary of Labor and Complainants;
Robert K. Spotswood, Esq., and John W. Hargrove, Esq.,
Bradley, Arant, Rose & White, Birmingham, Alabama, for
Respondent; Robert H. Stropp, Esq., and Patrick Nakamura,
Esq., Stropp & Nakamura, Birmingham, Alabama,
for Intervenor, and Complainants.

Before: Judge Broderick

On July 13, 1988, I issued a decision on the merits in this case in which I concluded that complainants Michael L. Price and Joe John Vacha were discharged by Jim Walter Resources Inc. (JWR) in violation of section 105(c) of the Federal Mine Safety and Health Act of 1977. I ordered the reinstatement of Price and Vacha to the positions from which they were discharged on March 2, 1987. I also ordered JWR to pay back wages and other benefits to Price and Vacha from March 3, 1987, until the date of their reinstatement with interest. I directed counsel to attempt to agree upon the amounts due complainants under this order.

On August 19, 1988, the parties filed a joint submission in which they agreed on the amounts due under my order as back pay

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and miscellaneous expenses to each of the claimants. The parties disagree as to whether complainants are entitled to one hour's pay for the time spent after the completion of their shift on March 2, 1987, when JWR ordered them to provide a urine sample. Vacha claims and JWR denies reimbursement for costs and attorneys' fees assessed in a lawsuit filed against him on an overdue account.

When a violation of section 105(c) is found, the statute directs the Commission to require such affirmative action to abate the violation as it deems appropriate. Appropriate affirmative action may include back pay, interest, reimbursement for damages or expenditures related to the unlawful discharge, a cease and desist order and a civil penalty for the violation of the Act.

Respecting the claim for one hour's pay for part of the time complainants spent on company property after being ordered to provide a urine specimen, the Secretary and JWR each relies on a different arbitrator opinion. In one opinion, the arbitrator held that employees who were tested under the program during nonworking hours were entitled to up to one hour's pay at overtime rates. In a later opinion, the arbitrator held that Price and Vacha were not entitled to pay for the time spent (4 1/2 hours) on company property after they were directed to provide urine specimens on March 2, 1987. It is not my function to interpret the collective bargaining contract or to reconcile arbitrator opinions. I must decide whether the claim is related to the discriminatory discharge. No wages were lost; no money was expended. The unlawful discharge did not occur until after the time for which the claim is made expired. I conclude that reimbursement for one hour of that time is not related to the unlawful discharge, and I deny that portion of the claim.

There is no evidence in the record to show that the expenses incurred by Vacha in connection with his lawsuit were related to the discriminatory discharge, and I deny that portion of his claim.

ORDER

1. The findings, conclusions and order incorporated in my decision of July 13, 1988, are REAFFIRMED.

2. Respondent is ORDERED to pay complainant Price within 30 days of the date of this order the sum of \$8,411.86 as back pay and expenses, with interest thereon in accordance with the Bailey v. Arkansas Carbona formula, calculated proximate to the time payment is actually made.

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3. Respondent is ORDERED to restore to Price the three days of graduated vacation pay he took to attend the hearing.

4. Respondent is ORDERED to pay complainant Vacha within 30 days of the date of this order the sum of \$6881.47 as back pay and expenses, with interest thereon in accordance with the Bailey v. Arkansas Carbona formula, calculated proximate to the time payment is actually made.

5. Respondent is ORDERED to pay to the Secretary within 30 days of the date of this order the sum of \$500 as a civil penalty for the violation found herein. Because I concluded that the substance abuse program was facially in violation of the Act, I treat it as a single violation. Because I concluded that JWR did not intend to diminish the rights and responsibilities of miners' representatives, I have reduced the amount of the penalty. (The Secretary requested a \$2000 penalty for each of two violations.)

James A. Broderick
Administrative Law Judge