

CCASE:
STANLEY BAKER V. KENTUCKY STONE
DDATE:
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

STANLEY BAKER.,	DISCRIMINATION PROCEEDING
COMPLAINANT	
v.	Docket No. KENT 87-142-D
KENTUCKY STONE COMPANY,	Pulaski Plant
RESPONDENT	

DECISION

Appearances: Philip P. Durand, Esq. and Wendy Tucker, Esq.,
Ambrose, Wilson, Grimm & Durand, Knoxville,
Tennessee, for Complainant;
John G. Prather, Jr., Esq., Law Offices of John G.
Prather, Jr., Somerset, Kentucky, for Respondent.

Before: Judge Weisberger

On July 28, 1988, a Decision was issued in which it was found that Complainant had established a cause of action under section 105(c) (the Act). The Decision contained an Order directing the Complainant to file a statement, within 20 days of the Decision, indicating the specific relief requested. The Order further provided that Respondent shall have 20 days to reply to Complainant's statement. It was further provided that the Decision was not to be final until a further order was issued with respect to Complainant's relief.

On August 15, 1988, Complainant filed a request for specific relief, which set forth the following requested relief:

- | | |
|--|--------------|
| 1. Net back wages to August 22, 1988 | \$23,168.00 |
| 2. Litigation Expenses (other than #3) | \$ 2,034.00 |
| 3. Attorney's fees to August 22, 1988 | \$17,871.00 |
| 4. Interest* | |
| Interest on net back wages | \$ 5,821.00 |
| Interest on net insurance damages | \$ 547.00 |
| | ÄÄÄÄÄÄÄÄÄÄÄÄ |
| Total interest on damages | \$ 6,368.00 |
| 5. \$52.00/year bonus given each year for wearing steel tip boots. (\$52.00 x 3 years) | |
| | \$ 156.00 |

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6. Reinstatement in his former position at Kentucky Stone as a front-end loader operator, together with all the accompanying benefits and privileges.
7. Reinstatement as well as back contribution to the pension plan at Kentucky Stone, such that the Plaintiff will be afforded the same benefits and rights he would have had if he had not been fired.
8. Net increase in health insurance expenses incurred as a result of the higher costs of insurance provided at Elmo Greer & Sons
\$ 2,890.00
9. Any safety bonuses paid for the years 1986, 1987, or 1988.

*By agreement of the Parties, interest will be computed at a stated rate of 10 percent simple interest per annum.

On August 22, 1988, Respondent filed a Response to Complainant's Request for Specific Relief, in which Respondent requested itemization of back wages, litigation expenses, attorney's fees, and equitable relief. On August 25, 1988, in a telephone conference call initiated by the undersigned with Counsel for both Parties, it was agreed that Complainant would furnish Respondent with the requested itemization. On September 1, 1988, Complainant filed an Amendment to Request for Specific Relief, which set forth an itemization and computation of back wages, attorney's fees, and litigation expenses. On September 2, 1988, an Order was entered allowing Respondent until September 12, 1988, to respond to Complainant's Amendment to Request for Specific Relief. To date, Respondent has not filed any such response.

Accordingly, I conclude that Respondent does not challenge the Specific Relief requested, and I find such relief to be reasonable and justified.

ORDER

Based on the record in this case, it is ORDERED that:

1. The Decision issued July 28, 1988, is CONFIRMED, and is now FINAL.
2. Respondent shall, within 30 days of this Decision, pay Complainant:

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a. Net back wages to August 22, 1988, in the amount of \$23,168.00. Respondent shall also pay Complainant back pay, at the rates set forth in Complainant's Amendment to Request for Relief for the period August 23, 1988, until Complainant is reinstated at his former job.

b. Recoupment of litigation expenses to August 22, 1988, in the amount of \$1,751.00.

c. Attorney's fees to August 22, 1988, in the amount of \$18,564.00.

d. Interest in the amount of \$6,368.00 to August 22, 1988. In addition, Respondent shall pay Complainant interest, at the rate set forth in Complainant's Amendment to Request for Relief, for the period from August 23, 1988, until Complainant is reinstated at his former job.

e. Past bonuses missed in the amount of \$156.00 for wearing steel tip boots.

f. Net increase in health insurance expenses incurred as a result of the higher cost of insurance provided at Elmo Greer & Sons in the amount of \$2,890.00.

g. Any safety bonuses paid for the years 1986, 1987, and 1988.

3. Respondent shall, within 5 days of this Decision, reinstate Complainant to his former position at Kentucky Stone as a front-end loader, together with all the accompanying benefits, privileges, and shall provide back contributions to the pension plan at Kentucky Stone such that Complainant will be afforded the same rights he would have had had he not been fired.

Avram Weisberger
Administrative Law Judge