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SOL (MSHA) & P. STANFIELD V. NAT'L MINES CORP.  
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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  
PATRICK STANFIELD,  
COMPLAINANT  
v.

DISCRIMINATION PROCEEDING  
Docket No. KENT 88-171-D  
MSHA Case No. BARB CD 88-25  
MSHA Case No. BARB CD 88-28  
Stinson No. 7 Mine

NATIONAL MINES CORPORATION,  
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 the complainant Patrick Stanfield 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 the respondent discriminated against the complainant by suspending him for lodging safety complaints and by forcing him to take previously unscheduled accrued annual leave after interrogating him about his complaints. The Secretary amended her complaint and proposed a civil penalty assessment against the respondent in the amount of \$2,500, for the alleged violation.

The respondent filed a timely answer denying any discrimination and the matter was scheduled for a hearing in Pikeville, Kentucky, during December 13-14, 1988. The hearing was cancelled after the Secretary's counsel advised me the parties agreed to settle the dispute. The parties have now filed a Joint Motion seeking approval of the proposed settlement. The relevant terms of the settlement are as follows:

1. National Mines Corporation agrees to pay Mr. Stanfield gross wages for the 12 working day suspension imposed by National Mines Corporation. Such wages amount to gross pay of \$1,618.81. Mr. Stanfield was paid on a monthly salary basis as a foreman.

2. The records maintained in Mr. Stanfield's personnel and company file shall be completely expunged of all information relating to the 12 day suspension.

3. In the event that National Mines Corporation is contacted by a prospective employer of Mr. Stanfield at any time in the future, National Mines Corporation agrees not to give Mr. Stanfield a negative or unfavorable reference regarding Mr. Stanfield's job performance while employed by National Mines Corporation. National Mines Corporation will when contacted by a prospective employer of Stanfield only give such prospective employer Mr. Stanfield's job title(s) and dates of employment.

4. In light of the difficulties and contingencies necessarily attendant to the litigation of the subject case together with the complex factual disputes requiring many witnesses and the nature of the economic loss to the complainant, which by the terms of this settlement shall be recompensed, the parties agree that the proposed settlement in this case is appropriate under the circumstances.

5. In consideration of the willingness of National Mines Corporation to resolve the claim quickly by payment of the back wages due to the complainant, the Secretary agrees to modify her requested civil penalty from the proposed amount of \$2500.00 to a reduced assessment of \$300.00.

Since Section 105(c) of the Act is uniquely designed to benefit the public interest by restitution to those affected by violation of Section 105(c) of the Act, the Secretary believes that such purposes are fulfilled in this case by the settlement terms.

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6. It is the parties' belief that approval of this settlement is in the public interest and will further the intent and purpose of the Federal Mine Safety and Health Act of 1977.

#### Conclusion

After careful review and consideration of the settlement terms and conditions executed by the parties in this proceeding, I conclude and find that it reflects a reasonable resolution of the complaint filed by MSHA on Mr. Stanfield'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 Joint 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 ORDERED to pay to the Secretary a civil penalty assessment of \$300 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.

George A. Koutras  
Administrative Law Judge