

CCASE:
SOL (MSHA) V. IDEAL BASIC INDUSTRIES
DDATE:
19890803
TTEXT:

~1486

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 THIRTEEN
COMPLAINANTS,
COMPLAINANT

DISCRIMINATION PROCEEDING
Docket No. CENT 88-142-D
Ada Quarry & Plant

v.

IDEAL BASIC INDUSTRIES, INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Lasher

The parties have reached an amicable resolution of this matter and on July 28, 1989, filed their motion for approval of settlement.

Pursuant to their settlement agreement, the parties reached the following accord:

1. Respondent agrees (a) not to impose requirements or restrictions upon its employees solely due to the employees' filing of State Workers Compensation claims based on disabilities allegedly caused by hazardous conditions existing in their work environment, (b) to comply with the provisions of Section 105(c) of the Federal Mine Safety and Health Act, and (c) that the employment records of the individual complainants will be completely expunged of all references to the circumstances involved in these matters.

2. Respondent agrees to submit to the counsel for Petitioner (Complainant) a certified or cashier's check payable to individual Complainant R. Gene Myers in the amount of \$637 less statutory deductions for FICA, state and federal tax withholding in full settlement of a claim for backwages due to R. Gene Myers arising from his five-day suspension for failing to comply with Respondent's work rules regarding respiratory and noise protection. This payment in no way prejudices R. Gene Myers' right to pursue his allegation of discriminatory discharge.

~1487

3. Respondent agrees to submit to the "Mine Safety and Health Administration-Labor" (Office of Assessments, 4015 Wilson Boulevard, Arlington, VA, 22203) a certified or cashier's check in the amount of \$11,000, which civil money penalty represents the full penalties to be assessed against Respondent in connection with all complained of activity, excluding discharge, asserted by complainants.

4. Petitioner agrees to withdraw from prosecuting its claims of discriminatory discharge. Complainant (Petitioner), i.e., the Secretary of Labor, after further review and evaluation, has determined that there is an insufficient basis for the Secretary to proceed with the claim of discriminatory discharge of any of the complainants. Pursuant to the parties' agreement, the individual complainants have been advised of this decision by the Solicitor's Office and have been informed that they can reserve their statutory rights to proceed independently. Accordingly, upon dismissal of the Secretary's case, the complainants are to be afforded their full statutory rights pursuant to 30 U.S.C. 815(c)(3) and 29 C.F.R. 2700.40(b), 41(b) and 42(a). See *Roland v. Secretary of Labor*, 3 MSHC 1770 (1985).

(Complainant and Respondent have agreed that the Secretary of Labor's withdrawal shall not prejudice the rights of the individual claimants to pursue, pursuant to 30 U.S.C. 815(c)(3) and 29 C.F.R. 2700.40(b), 41(b) and 42(a), their allegations of discriminatory discharge).

5. Each party has agreed to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

6. The parties have agreed that, except for actions under the Federal Mine Safety and Health Act, none of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by Respondent of the allegations contained in the Complainant's (Petitioner's) charge or the complaint filed by the Petitioner or the Motion to Approve this settlement agreement. The agreements, statements, stipulations, findings and actions taken herein are made for the purpose of amicably and economically settling disputed issues of fact and law and they shall not be used for any purpose except for proceedings arising under the enforcement of the Federal Mine Safety and Health Act or the terms of their agreement.

It is concluded that the settlement reached is appropriate and such is here approved.

ORDER

(1) The Complaint herein is dismissed with prejudice except as to any charges of discriminatory discharge brought directly by individual complainants which shall be without prejudice to any rights that they may have pursuant to statute, 30 U.S.C. Section 815(c) and 29 C.F.R. Sections 2700.40(b), 41(b) and 42(a).

(2) Within five working days of receipt of this order of the Administrative Law Judge approving the Settlement Agreement, counsel to the Secretary of Labor will send to each complainant a copy of the order and settlement agreement, certified mail, return receipt requested. This action by the Solicitor shall be the formal notification of withdrawal pursuant to 30 U.S.C. 815(c)(3) and 29 C.F.R. 2700.40(b).

(3) Respondent, shall pay a civil penalty totaling \$11,000.00 to the Secretary of Labor within 30 days from the date hereof.

(4) Within 30 days from the date of issuance hereof, Respondent shall pay to R. Gene Myers back pay described herein (\$637.00 less deductions).

Michael A. Lasher, Jr.
Administrative Law Judge