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SOL (MSHA) V. INFERNO COALS
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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
RUSSELL RATLIFF, AND
KENNETH MULLINS,
COMPLAINANTS

v.

INFERNO COALS, INC.,
RESPONDENT

DISCRIMINATION PROCEEDINGS

Docket No. KENT 89-99-D
MSHA Case No. PIKE CD 89-03

Docket No. KENT 89-107-D
MSHA Case No. PIKE CD 89-03
MSHA Case No. PIKE CD 89-05

No. H-8 Mine

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

INFERNO COALS INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 89-200
A.C. No. 15-11529-03521

Mine H-8

DECISIONS APPROVING SETTLEMENTS

Before: Judge Koutras

Statement of the Proceedings

These consolidated proceedings concern a complaint of alleged discrimination filed by MSHA on behalf of the complainants against the respondent pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977. The complaint alleged that the respondent discharged miners Russell Ratliff and Kenneth Mullins on or about December 22, 1988, for voicing their safety concerns to their supervisor about working alone on their roof-bolting machines under what they regarded as unstable roof conditions. MSHA subsequently amended its discrimination complaint to include a request for an assessment of a civil penalty in the amount of \$1,800, for an alleged violation of section 105(c) in connection with the alleged discriminatory discharge of both complaining miners, and it also filed the captioned civil

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penalty proceeding seeking a civil penalty assessment in the amount of \$500, for the respondent's alleged discharge of Mr. Ratliff subsequent to his reinstatement in compliance with an Order of Temporary Reinstatement which I issued on April 4, 1989 (Docket No. KENT 89-99-D).

The respondent filed timely answers denying any discriminatory actions on its part, and the cases were consolidated for hearing in Pikeville, Kentucky. The hearing was subsequently continued due to a medical emergency of one of the parties, and it was rescheduled for September 11-14, 1989. However, on September 5, 1989, counsel for the parties advised me that they agreed to settle the dispute, and on September 7, 1989, they filed a joint motion seeking approval of their proposed settlement. Included in the motion is the settlement agreement entered into by the parties, and it has been signed and executed by both counsel, the respondent's president, and both complaining miners. The relevant terms of the settlement are as follows:

1. Inferno agrees to pay Mullins the sum of five thousand dollars (\$5,000.00) which sum represents payment of all claims, including lost wages in the amount of \$4,840.00, employee benefits, and medical expenses. By accepting \$5,000.00, Mullins agrees that Inferno will not have to offer reinstatement to him.
2. Inferno agrees to pay Ratliff the sum of ten thousand dollars (\$10,000.00) which sum represents payment of all claims, including lost wages in the amount of \$5,720.00, employee benefits, and medical expenses. By accepting \$10,000.00, Ratliff agrees that Inferno will not have to offer reinstatement to him.
3. The records maintained by Inferno in Mullins' and Ratliff's personnel and company files shall be completely expunged of all information relating to the matters being litigated herein.
4. In the event that Inferno is contacted by a prospective employer of either Mullins or Ratliff at any time in the future, Inferno, its owners, officers, agents, and those acting in concert with them shall not give Mullins or Ratliff a negative or unfavorable reference regarding their job performance while employed by Inferno. When contacted by a prospective employer of either Mullins or Ratliff, Inferno, its owners, officers and agents, and those acting in concert with them shall give such prospective employer only their job title(s) and dates of employment.
5. Inferno will provide signed letters on its corporate stationery to Ratliff and Mullins which shall

state the dates of each miner's employment, the jobs performed for Inferno, the training each received, and that they had no unauthorized absences from work. The letters will state further that Ratliff was laid off as part of a general workforce layoff which was necessitated by adverse economic conditions. This general workforce layoff was necessitated by economic factors affecting this mine. Further, the letter for Mullins will state that he left the employment of Inferno when he found other employment.

6. Inferno will not be required to offer employment and/or reinstatement to either Mullins or Ratliff at any time in the future.

7. In light of the difficulties and contingencies necessarily attendant to the litigation of the subject cases, the signatories to this Motion agree that the proposed settlement of this case is appropriate and fair under the circumstances.

8. By entering into this agreement, Inferno does not admit that Inferno violated Section 105(c) of the Act or violated the Temporary Reinstatement Order issued on April 4, 1989, or any other provision of the Act.

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

With regard to the proposed settlement of the civil penalty case, including MSHA's civil penalty proposal filed as part of its amended discrimination complaint, MSHA's counsel has provided information concerning the six statutory civil penalty criteria found in section 110(i) of the Act, and a discussion and disclosure as to the circumstances on which its civil penalty assessment proposals are based.

I take note of the fact that the respondent disputed the allegation that it had discharged the miners in violation of the Act, and took the position that the complaining miners voluntarily left their jobs. With regard to the alleged failure by the respondent to comply with my reinstatement order concerning Mr. Ratliff, I take note of the fact that the inspector issued the citation on April 26, 1989, upon instructions by his supervisor after apparently receiving information that Mr. Ratliff had again been discharged on April 25, 1989. The information provided by the parties as part of their motion reflects that the mine superintendent advised the inspector that Mr. Ratliff had

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not been discharged, and that he had quit his job on April 25, 1989, returned to work the next day, April 26, 1988, and voluntarily left the mine again that day. On April 27, 1989, during the course of a regular inspection of the mine, the inspector observed that Mr. Ratliff was again at work underground, and he terminated the citation which he had issued the day before.

Included with the proposed settlement disposition of the discrimination complaint is a proposed settlement of the civil penalty assessment initially filed and proposed by MSHA for the alleged violation of section 105(c) of the Act, and the alleged violation by the respondent for allegedly discharging Mr. Ratliff following his reinstatement in compliance with my reinstatement order. The respondent has agreed to pay a civil penalty assessment of \$100 in settlement of the former alleged violation, and a civil penalty assessment of \$50 for the latter alleged violation.

Conclusion

After careful consideration of the settlement terms and conditions executed by the parties and the complaining miners in this proceeding, I conclude and find that it is a reasonable resolution of the complaint filed by MSHA on behalf of the miners. It seems clear to me that all parties are in accord with the agreed upon settlement disposition of the dispute, and I see no reason why it should not be approved. With regard to the proposed settlement of the civil penalty proceeding, I conclude and find that it is reasonable and in the public interest, and I find no reason for not approving it.

ORDER

The joint motion IS GRANTED, and the proposed settlements ARE APPROVED. The respondent IS ORDERED to fully comply forthwith with the terms of the settlement, and it is expected to immediately pay to Mr. Mullins and Mr. Ratliff the agreed upon monetary settlements of their claims. The respondent IS FURTHER ORDERED to pay to MSHA civil penalty assessments in the amount of \$150 in satisfaction of the alleged violations in question, and payment of the penalties is to be made within thirty (30) days of the date of these decisions and order. Upon receipt of payment by the complaining miners and MSHA, these proceedings are dismissed.

George A. Koutras
Administrative Law Judge