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SOL (MSHA) V. INDUSTRIAL CONSTRUCTORS
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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 HARRY RAMSEY,
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. WEST 88-246-DM

MD 87-51

v.

Colosseum Mine

INDUSTRIAL CONSTRUCTORS CORP.,
RESPONDENT

DECISION

Appearances: Norman J. Reed, Esq. and Nathaniel J. Reed, Esq.
Las Vegas, Nevada,
for Complainant;
William T. Murphy, Esq., Washington Corporations,
Missoula, Montana,
for Respondent.

Before: Judge Morris

This case involves a discrimination complaint originally filed by the Secretary of Labor on behalf of complainant pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

After notice to the parties a hearing on the merits was held in Las Vegas, Nevada on January 31, 1989. The issue of attorney fees was reserved for a later date.

In an interim order issued August 2, 1989, published at 11 FMSHRC 1585, the presiding judge found in favor of complainant.

The interim order provided:

1. For the reinstatement of complainant.
2. For back pay with interest from August 13, 1987, until complainant was reinstated.
3. The parties were further directed to stipulate, if possible, on the issue of the amount of damages and attorney fees. If the parties could not agree then a hearing would be held on October 24, 1989.

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On October 4, 1989, the parties filed a document entitled "Stipulation On Damages." The document reads as follows:

The undersigned parties to Mining Safety and Health Administration Docket No. WEST 88-246-DM involving Harry Ramsey and Industrial Constructors Corporation (hereinafter ICC) stipulate and agree to certain facts for purpose of settling the record on the amount of Mr. Ramsey's past, present and future damage claim. This agreement pertains to amount only and is not an agreement as to entitlement thereto.

Both parties preserve the right to appeal, and do not waive their right to contest the issues in the case, except that if ICC's liability to pay wages for any time period is affirmed in any appeal, the damages are set as follows:

1. Mr. Ramsey has waived reinstatement, and the parties agree that Mr. Ramsey declined reinstatement as of August 31, 1989, and that Mr. Ramsey's wage loss stopped accruing on that date.

2. The night shift at the Colosseum Mine terminated September 25, 1987, and thus the wages stated herein are divided into wages loss accumulated before said date and losses accumulated after said date. Wages before said date include overtime.

3. Mr. Ramsey's wage loss from August 13, 1987, to September 25, 1987, if affirmed, is:

a. \$2,631.01 in regular time wages, after payroll deductions.

b. \$943.23 in overtime wages, after payroll deductions.

c. \$709.71 in interest to August 31, 1989, on regular time and overtime wages.

d. \$226.00 in 401(k) payments.

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4. ICC's liability from September 25, 1987, to August 31, 1989, if affirmed, is:

- a. \$37,137.00 in regular time wages, after payroll deductions.
- b. \$3,408.00 in interest to August 31, 1989, on regular time wages.
- c. \$2,994.00 in 401(k) payments.

5. Attorney fees are set in the amount of \$15,375.00 for attorney fees up to September 27, 1989. Any fees incurred by Mr. Ramsey in an appeal or post trial work after September 27, 1989, shall be in addition to the above, if the court or Review Board allows said fees.

6. Mr. Ramsey's trials costs are \$1,556.00.

7. Interest accumulated on the above amounts after August 31, 1989, will be added to the above amounts up to time of collection, if allowed by the Court or Review Board.

Based on the record herein and the stipulation filed October 4, 1989, I hereby enter the following:

ORDER

1. The order reinstating complainant heretofore entered by the presiding judge is vacated.

2. Respondent is ordered to pay to complainant the following amounts for lost wages and interest:

- a. For the period from August 13, 1987, to September 25, 1987, the total sum of \$4,509.95.
- b. For the period from September 25, 1987, to August 31, 1989, the sum of \$43,539.00.

3. Respondent is further ordered to pay to complainant the sum of \$15,375.00 as and for attorney fees incurred by complainant until and including September 27, 1989.

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4. Respondent is further ordered to pay to complainant the sum of \$1,556.00 as and for trial costs.

5. After August 31, 1989, interest shall accrue on the above amounts until paid at such rates as may be published by the Executive Director of the Commission.

6. The hearing scheduled in Las Vegas, Nevada for October 24, 1989, is cancelled.

7. This is a final decision and order pursuant to Fed. R. Civ. P. 54(b).

John J. Morris
Administrative Law Judge