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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
RICHARD W. HAVILAND,
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. SE 87-44-DM

Docket No. SE 87-89-DM

Swift Creek Mine

v.

OCCIDENTAL CHEMICAL COMPANY,
RESPONDENT

AND

INTERNATIONAL CHEMICAL WORKERS UNION,
LOCAL NO. 784,
INTERVENOR

ORDER OF DISMISSAL

Before: Judge Broderick

On December 2, 1987, the Secretary filed a motion to withdraw its complaint in this case on the grounds that Complainant and Respondent reached a settlement in this matter according to which Richard Haviland is to receive a lump sum payment in compensation for the period June 30, 1986 to March 9, 1987, to be restored to all fringe benefits of his employment, to be reinstated to the position of Combination Analyst Repairman, to be reimbursed for covered medical claims accruing during the period June 30, 1986 to March 9, 1987, and to have his personnel records expunged of the complained-of discharge. On December 9, 1987, the Intervenor replied to the motion and stated that under the collective bargaining contract, Mr. Haviland would not be entitled to be reinstated in the position of Combination Analyst Repairman.

On December 14, 1987, the matter was discussed in a conference call with counsel for the Secretary and Respondent and Representatives of the Intervenor. The position of the Intervenor Union is that Haviland can claim the right to

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be reinstated to a position other than that of Analyst Repairman, approximately the same rate of pay. At my request Mr. Haviland submitted a statement, filed December 23, 1987, in which he indicated that he was aware of the position of the Union, but nevertheless desired to withdraw his complaint in accordance with the settlement agreement.

I have considered the motion and related filings and conclude that the settlement is in the best interest of the Complainant, and in furtherance of the purposes of the Act. Therefore, the motion to withdraw is GRANTED, and these proceedings are DISMISSED.

James A. Broderick
Administrative Law Judge