

CCASE:
D. THOMAS V. AMPAK MINING
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

DAVID THOMAS,	DISCRIMINATION PROCEEDING
COMPLAINANT	
	Docket No. KENT 89-13-D
v.	
	BARB CD 88-16
AMPAK MINING, INC.,	Mine No. 1
RESPONDENT	
GEORGE ISSACS,	DISCRIMINATION PROCEEDING
COMPLAINANT	
	Docket No. KENT 89-14-D
v.	
	BARB CD 88-34
AMPAK MINING, INC.,	Mine No. 1
RESPONDENT	

DECISION

Appearances: Tony Opegard, Esq., and Stephen A. Sanders, Esq.
Appalachian Research and Defense Fund of
Kentucky, Inc., Hazard, Kentucky for the
Complainants;
Geary Burns, Vice President, Ampak Mining, Inc.,
Van Lear, Kentucky for Respondent Ampak Mining, Inc.,
G. Graham Martin, Esq., Martin Law Offices, P.S.C.,
Prestonsburg, Kentucky for Respondent Johnson Coal
Company, Inc.

Before: Judge Melick

These proceedings are before me to determine the amount of
damages, attorney's fees and costs to be allowed based upon the
December 26, 1989, decision finding that Ampak Mining, Inc.,
discriminated against the Complainants in violation of Section
105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30
U.S.C. 801 et seq., the "Act".

The parties remaining in these cases have reached
stipulations as to the damages incurred by the Complainants as
follows:

The backpay period for the unlawful demotion of
David Thomas is 12/21/87 through 2/14/88; and the
backpay period for the unlawful termination of Thomas
is 2/15/88 through 7/1/88. Thomas' damages for these
periods (what he would have earned at Ampak less his
interim earnings) total \$6,250, plus interest to be

computed at the time of payment pursuant to the formula employed by the Commission in *UMWA v. Clinchfield Coal Co.*, 10 FMSHRC 1493 (1988).

The backpay period for the unlawful termination of George Issacs is 4/22/88 through 7/1/88. Issacs' damages for this period total \$6,080 plus interest to be computed at the time of payment pursuant to the formula employed by the Commission in *Clinchfield Coal Co.*

Complainants have also filed a "Statement of Attorney's Fees and Expenses" seeking attorney's fees and litigation expenses of \$43,806.80. These fees and expenses are not challenged and are accordingly awarded in accordance with Section 105(c)(3) of the Act.

The Complainants have also filed a pleading captioned "Motion for Leave to Proceed Against Ampak's Owners Individually, Based on the Alter Ego Doctrine, for the Liability Found Herein". In said Motion the Complainants apparently seek to enforce the judgment on this case individually against Geary Burns and Peggy A. Kretzer the alleged owners of the Respondent Ampak Mining Inc.

The Commission stated under similar circumstances in *Tolbert v. Chaney Creek Coal Corp.*, 9 FMSHRC at 1848, (1987), that:

[t]he essential nature of the remedy sought . . . is collection of a judgement debt. This relief involves inter alia, enforcement and execution of the Commission's final decision in this matter. Such an enforcement request is properly directed to the Secretary of Labor. Under the Mine Act the Secretary is empowered to seek compliance with Commission orders in the federal Courts. See 30 U.S.C. 816(b) & 818.

The Complainants herein must therefore direct their enforcement and execution efforts accordingly.

ORDER

Ampak Mining Inc., is hereby directed to pay the noted backpay award plus interest computed in accordance with the Commission decision in UMWA v. Clinchfield Coal Co., 10 FMSHRC 1493 (1988) within 30 days of the date of this decision. Ampak Mining Inc., is further directed to pay the Complainants attorney's fees and litigation expenses of \$43,806.80 within 30 days of the date of this decision. The Complainants "Motion for Leave to Proceed Against Ampak's Owners Individually, Based on the Alter Ego Doctrine, for the Liability Found Herein" is denied. This decision represents the final disposition of these proceedings before the undersigned judge.

Gary Melick
Administrative Law Judge