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SOL (MSHA) V. CONSOLIDATION COAL  
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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, EX REL,  
WILLARD GENNOY,  
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. WEVA 90-77-D  
MORG CD 90-01

Arkwright No. 1 Mine

v.

CONSOLIDATION COAL COMPANY,  
RESPONDENT

DECISION APPROVING SETTLEMENT

Before: Judge Broderick

On August 17, 1990, the Secretary filed a motion to approve settlement in the above proceeding. Pursuant to the settlement agreement, I make the following findings and order:

1. Willard Gennoy was engaged in protected activity on August 24, 1989, when he complained to a Consol management official about allegedly unsafe conditions and equipment on surface areas of the Arkwright No. 1 Mine.
2. Consol illegally discriminated against Willard Gennoy in violation of section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(1), by attempting to discharge him for his protected activity.
3. Consol is ORDERED to execute and post a copy of the Notice to Miners, attached hereto, at the Arkwright No. 1 Mine for a period of not less than 30 days.
4. Consol is ORDERED to expunge any reference to the events of the morning of August 24, 1989, and the attempted discharge of Willard Gennoy from all records maintained by Consol which are searchable by the Complainant's name, including but not limited to, the personnel records of Consol.
5. Consol is ORDERED to pay back wages to Willard Gennoy of \$2737.61 within 30 days of the date of this order. Consol is authorized to withhold from this sum such moneys as are authorized or required by law or contract to be withheld. Consol shall provide Willard Gennoy with a written statement itemizing such withholding at the time of payment.

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6. Consol is ORDERED to pay Willard Gennoy case related expenses of \$228 within 30 days of the date of this order.

7. Consol is ORDERED TO PAY the Secretary a civil penalty of \$100 within 30 days of the date of this order.

James A. Broderick  
Administrative Law Judge

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ATTACHMENT TO DECISION RE: WEVA 90-77-D

NOTICE TO MINERS

This notice is provided to convey Consolidation Coal Company's awareness of the anti-discrimination provisions of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. and to insure all employees of Consolidation Coal Company that the safety of employees is management's foremost concern.

Consolidation Coal Company, the Secretary of Labor, and Willard Gennoy have reached a settlement in an action filed by the Secretary on behalf of Willard Gennoy under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. in the case of Secretary of Labor, Mine Safety and Health Administration (MSHA), on behalf of Willard Gennoy v. Consolidation Coal Company, Docket No. WEVA 90-77-D. The Secretary filed that action after receiving a complaint from Willard Gennoy that Consol attempted to discharge him after Willard Gennoy complained about unsafe conditions and equipment to a management official.

Management recognizes that the identification of problems affecting safety are essential and are protected under the Mine Act. Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977 provides in its entirety:

No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners, or applicant for employment in any coal or other mine subject to this Act, because such miner, representative of miners, or applicant for employment has filed or made a complaint under or related to this Act, including a

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complaint notifying the operator of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner, representative of miners, or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise of such miner, representative of miners, or applicant for employment of any statutory right afforded by this Act. (emphasis added)

Consolidation Coal Company acknowledges that this provision of the Mine Act prohibits Consol from discriminating against a miner because that miner reports an alleged danger or safety or health violation to management, the mine safety committee, the State of West Virginia, or the Mine Safety and Health Administration. Moreover, all miners, mine safety committeemen, and foremen are afforded this protection against discrimination.

Consolidation Coal Company acknowledges that the Mine Act prohibits Consol from treating a miner who complains about an alleged danger or safety or health violation differently than other miners.

Consolidation Coal Company encourages miners to report any condition or practice believed to be unsafe or a violation of a mandatory safety or health standard to management. It is not now nor has it ever been Consolidation Coal Company's policy or practice to discriminate or otherwise interfere with miners exercising their rights under Section 105(c)(1) of the Mine Act.

With continued cooperation between employees and management,

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it is our belief that we can maintain a safe and productive work environment.

Sincerely,

James Simpson  
Superintendent