

CCASE:
SOL (MSHA) V. DRAVO BASIC MATERIALS
DDATE:
19900928
TTEXT:

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
ALONZO WALKER,
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. SE 90-86-DM
MSHA Case No. MD 90-03

Selma Mine

v.

DRAVO BASIC MATERIALS COMPANY,
INC.

AND

R & S MATERIALS, INC.,
RESPONDENTS

ORDER

Before: Judge Fauver

On August 10, 1990, I issued a decision finding that Alonzo Walker was discharged by R & S Materials, Inc., on January 10, 1990, in violation of section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. The parties were given additional time to submit proposed findings and conclusions on the issues of liability of Dravo Basic Materials Company, Inc., as a successor in interest, the civil penalty to be assessed, and the relief to be granted to Mr. Walker.

The parties have filed a proposed settlement of these remaining issues. I find the settlement to be consistent with the record and the purposes of the Act.

WHEREFORE IT IS ORDERED that:

1. The joint motion to approve settlement is GRANTED.
2. Within 30 days of this order, Alonzo Walker will be paid backpay from January 10, 1990, through April 22, 1990, in the amount of \$5,890.63, plus \$75.00 in interest. Such payment will be a full and complete accord and satisfaction of all monetary claims by Mr. Walker against Dravo and R & S arising out of his discharge on January 10, 1990. Dravo and R & S may allocate between themselves the responsibility for paying such backpay and interest.

~2149

3. Alonzo Walker will be reinstated by Dravo to the position of dragline operator at the Selma Mine at the same rate of pay as he earned on January 10, 1990, i.e., \$6.50 an hour. Reinstatement will occur at a date to be agreed upon by Dravo and Mr. Walker, but no later than October 29, 1990. Until such reinstatement, economic reinstatement of Mr. Walker as provided by the previous order of temporary reinstatement will continue.

4. Dravo acknowledges that it will consider, and is ordered to consider, the discharge of Mr. Walker on January 10, 1990, as null and void and of no effect. The record of such discharge will not be considered in any way in any future employment decisions, including but not limited to promotions, pay increases, and layoff, nor in any disciplinary proceedings concerning Mr. Walker.

5. Within 30 days of this order, Dravo and R & S shall pay a civil penalty of \$200 for the violative discharge of Mr. Walker. Dravo and R & S may allocate between themselves the responsibility for paying such civil penalty.

6. Upon compliance with this order, the Secretary shall file a satisfaction of order, signed by counsel for the Secretary and by Alonzo Walker.

7. The decision of August 10, 1990, and this order shall not become a final disposition of this proceeding until a supplemental decision is issued.

William Fauver
Administrative Law Judge