

FEDERAL **MINE** SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

October 29, 1990

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 90-314-D
ON BEHALF OF	:	
RANDY SHERBROOK,	:	Dry Fork Mine
Complainant	:	
	:	
v.	:	
	:	
T.I.C. WYOMING,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT  
ORDER TO PAY  
ORDER OF DISMISSAL

Before: Judge Merlin

On October 15, 1990, the parties filed a joint motion to approve settlement in the above-captioned discrimination case. The motion sets forth the proposed agreement as follows:

The parties having conferred and agreed and the Secretary having been authorized by respondent to represent such agreement to the Commission, hereby move as follows:

1. Respondent was charged in the Complaint of Discrimination filed on or about August 4, 1990, with a violation of section **105(c)** of the Mine Safety and Health Act, for terminating the employment of Randy Sherbrook.
2. Respondent has agreed, prior to the filing of the answer in this matter, to settle the existing dispute which is the subject of this action. Respondent will pay to Randy Sherbrook **\$1,240.00** in **full** settlement of all matters in issue in this case.
3. Respondent has agreed to completely expunge from the personnel file of Randy Sherbrook, all comments and references to the circumstances involved in the May 24, 1990 incident at the Dry Fork Mine which led to the discharge of Mr. Sherbrook.
4. Accordingly, petitioner hereby agrees to withdraw her request for any further relief on behalf of Randy Sherbrook, withdraws her request for the assessment of

a civil penalty and reinstatement of Randy Sherbrook, and requests that this matter be dismissed. Such request is to be effective upon the approval of this settlement agreement by the Federal Mine Safety and Health Review Commission.

5. Petitioner and Respondent agree that Randy Sherbrook will sign a release of all claims arising out of this action, prior to submission of this Motion to the Commission, and in the event that he fails to sign such release, the settlement will not be effective, and the above amount will not be paid. Submission of this agreement to the Commission is a certification by Petitioner that such release has been signed.

6. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

WHEREFORE, the parties move the Commission to approve the above settlement agreement pursuant to 29 C.F.R. § 2700.30, Rules of Procedure, FMSHRC, and to order payment of \$1240.00 to Randy Sherbrook within ten days of the filing of an order approving settlement, and to dismiss the complaint filed in this action.

I find the settlement appropriate under the circumstances and note that the motion has been signed by all the parties including the complainant.

Accordingly, it is ORDERED that the proposed settlement be APPROVED and the operator PAY \$1,240 to Randy Sherbrook within 10 days of the date of this order.

It is further ORDERED that this case be DISMISSED.



Paul Merlin  
Chief Administrative Law Judge

Distribution:

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