

CCASE:  
CHARLES T. SMITH v. KEM COAL  
DDATE:  
19910131  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline 10th Floor  
5203 Leesburg Pike  
Falls Church, Virginia 22041

CHARLES T. SMITH,  
COMPLAINANT  
v.

DISCRIMINATION PROCEEDING

Docket No. KENT 90-30-D

KEM COAL COMPANY,  
RESPONDENT

BARB CD 89-27

DECISION

Appearances: Michael S. Endicott, Esq., Ed Spencer's Law  
Offices, Paintsville, Kentucky, for the  
Complainant;  
Timothy Joe Walker, Esq., Reese, Lang & Breeding,  
P.S.C., London, Kentucky, for the Respondent.

Before: Judge Fauver

By decision of October 31, 1990, Respondent was found to have discharged Complainant in violation of 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. Based upon that decision, the parties stipulated damages and costs (except an attorney's fee) in the amount of \$21,864.18, including interest, through October 31, 1990.

Complainant also seeks an attorney fee of \$7,500.00, and an order establishing an attorney fee of \$150.00 an hour for any future legal work on appeal of this case.

Respondent opposes the proposed attorney fee and seeks a reduced award. The record indicates that counsel for Complainant has expended 30.15 hours in legal work in this case thus far. It further indicates that a reasonable and customary fee for comparable cases in the Eastern Kentucky area is \$150.00 an hour.

In determining a reasonable attorney fee, the recognized starting point is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. A reasonable hourly rate is defined as that prevailing in the community for similar work. Once established, this computation may be adjusted upward or downward for unusual or special circumstances.

I find that this case does not present unusual or special circumstances warranting an adjustment of a computation based on an hourly rate of \$150.00.

FINAL ORDER

Respondent, Kem Coal Company, shall immediately pay Complainant (1) \$21,864.18, reflecting back pay and other stipulated damages with interest through October 31, 1990, and (2) damages, with interest, incurred since October 31, 1990, until Complainant is reinstated or rejects a bona fide offer of reinstatement.

Respondent, Kem Coal Company, is FURTHERED ORDERED to pay Complainant's attorney an attorney fee of \$4,522.50, based on a hourly rate of \$150.00 for 30.15 hours expended on this litigation, and a future fee based on an hourly rate of \$150.00 for any legal work reasonably expended on this matter after the date of this decision.

This Decision and the Decision of October 31, 1990, constitute a final disposition of this matter.

William Fauver  
Administrative Law Judge