

CCASE:

LONNIE ROSS V. SHAMROCK COAL

CHARLES GILBERT V. SHAMROCK COAL

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LONNIE DARRELL ROSS, : DISCRIMINATION PROCEEDINGS
 Complainant :
 :
 v. : Docket No. KENT 91-76-D
 : BARB CD 90-40
 :
 SHAMROCK COAL COMPANY, : No. 10 Mine
 INC., :
 Respondent :

CHARLES E. GILBERT, : Docket No. KENT 91-77-D
 Complainant :
 : BARB CD 90-41
 :
 v. : No. 10 Mine
 :
 SHAMROCK COAL COMPANY, :
 INC., :
 Respondent :

SUPPLEMENTAL DECISION AND FINAL ORDER

Before: Judge Fauver

These consolidated proceedings were brought against Shamrock Coal Company, Inc., alleging that Complainants were wrongfully discharged for protected activities, i.e., making safety complaints, in violation of 105(c)(1) of the Federal Mine Safety Act of 1977, 30 U.S.C. 801 et seq.

On September 18, 1991, a decision on liability was entered finding that Respondent had discriminated against Complainants on July 31, 1990, by discharging them in violation of 105(c)(1) of the act.

Further proceedings on monetary relief through conference calls with the judge and attorneys for the parties, and the exchange of documents and positions between the attorneys, have resulted in Complainants' amended proposed order for monetary relief, filed on January 6, 1992. There has been no further reply from Respondent.

FINDINGS AND CONCLUSIONS

1. Charles E. Gilbert was employed by Respondent at an hourly rate of \$14.49, working a 40-hour week with an average of 4.3 hours overtime per week. His Christmas bonus was ordinarily

~230

\$700.00. He is entitled to back pay of \$38,027.36. The employer may take a credit for a two week suspension, for \$1,159.20. Gilbert is therefore entitled to net back pay of \$35,708.96, plus interest of \$2,266.91.

2. Because of the discharge in violation of 105(c)(1) of the Act, and financial constraints caused by the discharge, Gilbert withdrew \$39,374.27 from his retirement (profit sharing) fund with Respondent. Due to this early withdrawal he had to pay \$12,276.00 in taxes and penalties. The penalty portion is \$3,621.00, which Respondent shall be ordered to pay as reimbursement.

3. Gilbert also suffered a lapse of health insurance that would have paid medical bills but for his wrongful discharge. The relevant bills are for \$478.90, which Respondent shall be ordered to pay as reimbursement.

4. Gilbert is entitled to total individual damages as follows: (A) Back pay of \$35,708.96 with lawful payroll deductions for withholdings of Social Security, \$2,820.41, federal taxes, \$3,692.00, and Kentucky taxes, \$1,895.92, i.e., net back pay of \$28,459.83; plus (B) interest of \$2,266.91, and plus (C) reimbursements for medical bills of \$478.90 and a tax penalty of \$3,621.00, for a net total of \$34,826.64.

5. Lonnie Darrell Ross was employed by Respondent at an hourly rate of \$15.43, working a 40-hour week with an average of 10 hours overtime per week. His Christmas bonus was ordinarily \$715.00. He is entitled to back pay of \$48,242.20. The employer may take a credit for a two week suspension, for \$1,234.40, and for \$4,997.20 in outside earnings by Ross. Ross is therefore entitled to net back pay of \$42,010.60 plus interest of \$2,607.65.

6. Ross is also entitled to recover \$600.00 for medical bills that would have been paid by medical insurance had he not been wrongfully discharged.

7. Because of the discharge in violation of 105(c)(1) of the Act, and financial constraints caused by the discharge, Ross withdrew \$51,173.89 from his retirement (profit sharing) fund with Respondent. Due to this early withdrawal, he had to pay a penalty of \$5,117.38, which Respondent shall be ordered to pay as reimbursement.

8. Ross is entitled to total individual damages as follows: (A) Back pay of \$42,010.60 with lawful payroll deductions for withholdings of Social Security, \$3,596.10, federal taxes, \$5,356.00, and Kentucky taxes, \$2,501.20, i.e., net back pay of \$30,557.30, plus (B) interest of \$2,607.65, and plus (C) reimbursements for medical bills of \$600.00 and a tax penalty of \$5,117.38, for a net total of \$38,882.33.

~231

9. Complainants are jointly entitled to litigation costs of \$2,515.63 and a reasonable attorney fee, which is awarded at \$150.00 per hour for 197 hours (i.e., \$29,850.00). The attorney fee includes all office overhead expenses.

ORDER

1. Within 10 days of the date of this order, Respondent shall pay Charles E. Gilbert a net of \$34,826.64, as computed above, and shall make payments to the appropriate federal and state tax agencies of the withholdings specified above.

2. Within 10 days of the date of this order, Respondent shall pay Lonnie Darrell Ross a net of \$38,882.33, as computed above, and shall make payments to the appropriate federal and state tax agencies of the withholdings specified above.

3. Respondent shall pay the Complainants' litigation costs including an attorney fee by a check for \$32,375.63 made payable to "Phyllis L. Robinson." Upon cashing such check, Attorney Robinson shall immediately pay a refund to Complainants for any of the litigation costs or attorney fee they have previously paid to her.

4. After the above payments are made, Complainants shall promptly file a Satisfaction of Order stating the dates and amounts of the payments.

5. The decision of September 18, 1991, and this supplemental decision and order constitute the judge's final disposition of these proceedings.

William Fauver
Administrative Law Judge

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