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CLIFFORD MEEK v. ESSROC

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

CLIFFORD MEEK,
COMPLAINANT
v.
ESSROC CORPORATION,
RESPONDENT

DISCRIMINATION PROCEEDING
Docket No. LAKE 90-132-DM
MSHA Case No. UC MD-90-06

SUPPLEMENTAL DECISION

Before: Judge Fauver

This discrimination proceeding was brought under 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

On December 24, 1991, a decision on liability was entered finding that Respondent discriminated against Complainant by refusing to employ him because of his protected activities. As stated at page 12 of the decision, "This decision shall not be a final disposition of this proceeding until a supplemental decision is entered on monetary relief."

Further proceedings are in process on issues of monetary relief due Complainant.

Before considering the parties' proposals and arguments on monetary relief, I observe that a motion to dismiss has not been formally ruled upon; however, its denial is implicit from the decision on liability. This supplemental decision addresses the motion to dismiss, and sets a time for the parties to submit their final proposals and documents on monetary relief.

At the close of Complainant's evidence at the hearing, Respondent moved to dismiss the complaint on the ground that Complainant had not made out a prima facie case of discrimination.

Denial of this motion is implicit in the decision on liability, which credits Complainant's evidence and finds that it establishes a prima facie case of discrimination. For the record, the motion to dismiss is hereby formally DENIED, for reasons included in the findings, conclusions and discussion in the decision on liability.

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This case is pending further procedures and a final order on monetary relief. If needed, a supplemental hearing will be scheduled on factual issues concerning monetary relief. The parties shall have 15 days from the date of this decision to submit their final proposals and supporting documents on monetary relief.

William Fauver
Administrative Law Judge