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SOL (MSHA) V. NEW HOPE
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA) ON
BEHALF OF EARL SHACKLEFORD,
COMPLAINANT

DISCRIMINATION PROCEEDING
Docket No. KENT 91-457-D
MSHA Case No. BARB-CD-90-37

EARL SHACKLEFORD,
INTERVENOR

v.

NEW HOPE COMPANY OF KENTUCKY,
INC., L & R CONTRACTORS,
INC. AND REECE LEMAR,
RESPONDENT

ORDER OF DISMISSAL

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for the Complainant;
Tony Oppeward, Esq., Mine Safety Project of the
Appalachian Research and Defense Fund of Kentucky,
Inc., for Intervenor;
Robert A. Thomas, Esq., Harlan, Kentucky,
for Respondents L & R Contractors, Inc. and Reece
Lemar; Henry S. Johnson, Esq., for Respondent New
Hope Company of Kentucky, Inc.

Before: Judge Melick

The Complainant, Secretary of Labor, and the Intervenor,
Earl Shackelford, request approval to withdraw the Complaint and
Petition for Civil Penalty in the captioned case based upon a
settlement agreement reached at hearings and set forth in the
Appendix hereto. The Respondents are hereby ordered to comply
with the terms of said agreement and, under the circumstances
herein, permission to withdraw is granted. 29 C.F.R. 2700.11.
This case, including both the Discrimination Complaint and
Petition for Civil Penalty, are therefore dismissed.

Gary Melick
Administrative Law Judge

APPENDIX

MR. GROOMS: (Counsel for the Secretary)

* * *

The respondents, New Hope of Kentucky Company, Incorporated, L & R Contractors, and Reece Lemar agreed to be liable jointly and severally and to pay the miner Earl Shackelford, Jr., \$20,000 in damages to be paid in 40 weekly installments of \$500 per week. This payment will be by check to be sent certified mail -- certified mail return receipt to Mr. Shackelford at the following address: It's H.C. 65, Box 203 Wallings, W-a-l-l-i-n-s Creek, Kentucky 40873. The first \$500 payment in damages will commence on Friday, July 24th, 1992.

Upon the commencement of this payment, the prior payments that were being made under the settlement which was entered into by the parties and approved by the Court on June the 5th, 1992, will be terminated as of that date and economic reinstatement will no longer apply. Those payments will not be deducted from the \$20,000 in damages that the parties have settled upon. The settlement includes an acceleration clause; that is, your Honor, that if any one of the \$500 payments is not made on the successive 40 Fridays, that upon this failure and written notification to the respondents that the respondents will have 5 days from the receipt of such notice to cure that failure to pay. Otherwise, the full amount of the balance due of that date will become immediately due and payable. The notice of failure to pay according to the terms of this agreement will be sent to Mrs. R-o-b-b-i-n-s, the first name I-n-a, at P.O. Drawer 1597, Harlan, Kentucky 40831.

Mr. Shackelford -- another term of the settlement is that Mr. Shackelford agrees to waive personal reinstatement and Mr. Shackelford agrees not to file or pursue any civil action including but not limited to an act for wrongful discharge or an action for unemployment compensation benefits against the respondents. The government agrees to withdraw its proposal for civil money penalty and subject to the Court's discretion.

* * *

MR. GROOMS: I apologize, your Honor. This is a little bit unusual, I suppose. I think your Honor is correct. I think that if we get an order directing

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compliance with the terms of the settlement and your approval, then it actually can be dismissed. And we can take that order if necessary so that would not be necessary for it to be held open.

THE COURT: All right.

MR. GROOMS: Is that all right?

THE COURT: That will be fine.

MR. GROOMS: I know this is somewhat unusual, your Honor. I guess that's why we have a little bit of confusion on that.

THE COURT: All right. Then I will go ahead upon conclusion of this proceeding to issue an Order of Dismissal.

MR. GROOMS: Okay. I have other terms, your Honor. I haven't finished.

THE COURT: Yes, I understand. Go ahead.

MR. GROOMS: I don't remember if I mentioned Mr. Shackelford agrees to waive personal reinstatement. The parties agreed that this settlement agreement does not constitute admission of liability by the respondents in this proceeding. Department of Labor also agrees to submit citation civil -- I mean to submit Citation No. 3831121 and No. 3831122 issued to New Hope Company of Kentucky, May 8, 1982, for regular assessment Code of Federal Regulations, Part 100, that it will not be subject to special assessment. That is, as I said, the order out of a -- they were issued in an attempt to institute reinstatement to Mr. Shackelford under temporary reinstatement order on that day. I would ask that the attorneys respond, satisfied as correct statement of that, your Honor. If not --

MR. JOHNSON: Yes, it is.

MR. THOMAS: I believe the payments are going to be styled as damages.

MR. GROOMS: Right. I didn't mention that.

MR. OPPEGARD: Mr. Shackelford agrees with the terms. . . .