

CCASE:
VINCENT BRAITHWAITE V. TRI-STAR MINING
DDATE:
19921201
TTEXT:

~2001

VINCENT BRAITHWAITE, : DISCRIMINATION PROCEEDING
Complainant :
 :
v. : Docket No. WEVA 91-2050-D
 : MORG CD 91-06
 :
TRI-STAR MINING, INC., :
Respondent :

DECISION DENYING MOTION FOR RECONSIDERATION
AND AWARDING DAMAGES

Appearances: Vincent Braithwaite, Piedmont, WV,
Pro Se;
Thomas G. Eddy, Esq., Eddy & Osterman,
Pittsburgh, PA, for Respondent.

Before: Judge Fauver

This case was brought under 105(c) of the Federal Mine
Safety and Health Act of 1977, 801 et seq., alleging a
discriminatory discharge.

On August 24, 1992, a decision on liability was entered,
finding that Respondent discharged Complainant on April 2, 1991, in
violation of the Act, and that on the date of hearing, April 29,
1992, Respondent made a bona fide offer to reinstate Complainant
pending a decision on liability and Complainant refused the offer.
The decision therefore limited the period for back pay to April 2,
1991, through April 29, 1992.

Following extensive conference calls and exchanges of
documents on damages, a hearing on damages was held on September
29, 1992. At the hearing, Respondent moved to reconsider the
decision on liability based on the decision of the Maryland
Department of Economic and Employment Development Office of
Unemployment Insurance, dated April 12, 1991. The state agency
denied Complainant's claim for unemployment compensation on the
ground that he had refused to perform work and his "action was a
deliberate and wilful disregard of standards of behavior, which
his/her employer had a right to expect." I have reviewed the
documents and arguments submitted on the motion, and find that the
state agency's decision does not warrant reconsideration of my
liability decision. The state decision is not binding on this
Commission, and did not involve federal issues raised by the Mine
Safety Act.

~2002

At the hearing on damages, based on the hearing evidence and prehearing exchanges of documents and representations of facts in the conference calls, a provisional order was entered assessing damages as follows:

1) Damages for repossessed truck.	\$2,150.00 (Footnote
Medical expenses that would have been paid by Pennsylvania Blue Shield had Complainant not been discharged.	\$7,854.00
Back pay after deduction for earnings from other employment.	\$19,798.00
Litigation expenses and expenses seeking other employment.	\$198.13
	\$30,001.12

After the hearing, Respondent submitted a letter from Pennsylvania Blue Shield stating that it would not have paid a certain part of the prenatal charges paid by Complainant. Based on that letter, and without opposing documents from Complainant, I find that \$2,300.00 should be deducted from the bill from Drs. Mould and Kho for \$4,100.00 in considering Complainant's medical damages. This deduction results in an allowance of \$1,440.00 for their bill (80% x \$1,800.00), instead of the allowance in the provisional order of \$3,280 (80% x \$4,100.00). (Footnote 2) This change reduces medical damages to \$6,614.99 (\$7,854.99 minus \$1,840.00).

Based on the evidence, no other adjustments in the provisional order are warranted. Accordingly, damages will be awarded in the amount of \$28,161.12 (\$30,001.12 minus \$1,840.00), plus interest.

ORDER

WHEREFORE IT IS ORDERED that:

1. The motion for reconsideration of the decision on

¹ This figure is reached by adding (A) the fair market value of the truck (time of repossession) and (B) the lender's charge for repossession, then subtracting (C) the lender allowance for the repossession sale of the truck. The figures are included in the transcript of the hearing on damages.

² I find that Blue Shield would have paid 80% of the covered part of the doctors' bill and 100% of the hospital bill submitted by Complainant.

~2003

liability is DENIED.

2. Within 30 days of the date of this decision, Respondent shall pay damages of \$28,161.12 to Complainant plus accrued interest from April 2, 1991, until the date of payment. Interest will be computed according to the Commission's decision in Local Union 2274, UMWA v. Clinchfield Coal Co., 10 FMSHRC 1483 (1988), aff'd sub nom. Clinchfield Coal Co. v. FMSHRC 895 F.2d 773 (D.C. Cir., 1990), and calculated in accordance with the formula in Secretary/Bailey v. Arkansas Carbona, 5 FMSHRC 2042 (1984).

3. This decision and the decision on liability constitute the judge's final disposition of this proceeding.

William Fauver
Administrative Law Judge

Distribution:

Mr. Vincent Braithwaite, 53 West Harrison Street, Piedmont, West Virginia 26750 (Certified Mail)

Thomas G. Eddy, Esq., Eddy and Osterman, 820 Grant Building, Pittsburgh, PA 15219 (Certified Mail)

/fccca