

CCASE:  
MSHA V. ISLAND CREEK COAL  
DDATE:  
19921211  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 92-1010-D
on behalf of	:	MORG CD 92-03
Ralph J. Thorn,	:	
Complainant	:	Dobbin Mine
v.	:	
	:	
ISLAND CREEK COAL COMPANY,	:	
Respondent	:	

ORDER APPROVING SETTLEMENT AND DISMISSING CASE

Before: Judge Barbour

This proceeding concerns a complaint of discrimination filed by the Secretary of Labor ("Secretary") on behalf Ralph J. Thorn, Complainant, against Island Creek Coal Co. ("Island Creek") pursuant to Section 105 of the Federal Mine Safety and Health Act of 1977 (the "Mine Act"), 30 U.S.C. 815(c). The complaint alleges that the Complainant was illegally discriminated against on February 5, 1992, when a written warning was unlawfully placed in his personnel employment file. Island Creek filed a timely answer denying that it had violated Complainant's Section 105(c) rights and the parties engaged in pre-trial discovery. Following the scheduling of this matter for hearing, counsels for the parties settled the case, and counsel for the Secretary has submitted a motion to approve the settlement. The motion is signed by counsels and the Complainant and sets forth the parties agreements with respect to resolving the matter. In particular, it states:

1. That Island Creek agrees to clear Complainant's employment record of all references pertaining to any incidents occurring from February 4 through February 14, 1992, at the Dobbin Mine; that Island Creek specifically agrees to immediately expunge the disciplinary warnings which were dated February 5, 1992 by Michael Nestor and February 14, 1992 by Richard Perando, and any references to such warnings, from any and all personnel files, payroll files, mine files, supervisors' notes, microfilm/microfiche files, and any other records maintained by Island Creek, Island Creek Corporation, or by any of their agents; and that Island Creek further agrees to mail the original copies of the warnings to the Secretary within ten (10) days of the issuance of the Order approving settlement.

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2. That Island Creek agrees that it shall not assert, rely upon, or otherwise consider the disciplinary actions taken in February 1992 in any future disciplinary action, personnel decision, or other action involving the Complainant.

3. That Island Creek asserts that it is complying and will continue to comply with Section 105(c) of the Mine Act, agrees that it will not discharge or in any other manner discriminate against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners, or applicant for employment in any coal or other mine subject to the Mine Act because such miner, representative of miners, or applicant for employment had filed or made a complaint under or related to the Mine Act, including a complaint notifying the Respondent, the Respondent's agent, of an alleged danger, or safety or health violation in a coal or other mine, or because such miner, representative of miners, or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to Section 101 of the Mine Act, or because such miner, representative of miners, or applicant for employment has instituted or caused to be instituted any proceeding under or related to the Mine Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miner, or applicant for employment on behalf of himself or others of any statutory right afforded by the Mine Act.

4. That Island Creek agrees to pay a civil penalty of one thousand (\$1,000) within thirty (30) days of the issuance of the Order approving settlement.

5. That Island Creek agrees to post a copy of the Motion To Approve Settlement and this Order approving settlement at the Dobbin Mine for a period of not less than thirty (30) days.

6. That the parties agree the settlement agreement shall not be offered or used for any other purpose whatsoever, except for Mine Act proceedings.

7. That except for amounts already received by Complainant and the reinstatement of personal leave to the Complainant, the parties agree to bear their own costs.

I conclude that the settlement, which compromises and settles this matter amicably, is in the public interest and should be approved.

ORDER

Accordingly, Island Creek is ORDERED to comply with provisions 1, 2, 3, 4, and 5 of the Agreement as stated above, and Island Creek, the Secretary and the Complainant are ORDERED

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to comply with provisions 6 and 7 of the Agreement, as stated above. Island Creek shall mail to the Secretary the original warnings dated February 5 and February 14, 1992 within ten (10) days of the date of this Order and a civil penalty of (\$1,000) within thirty (30) days of the date of this Order. Upon receipt of the warnings and of payment, this proceeding is DISMISSED.

Counsels are commended and thanked for the diligent and responsible manner in which they have represented their respective clients during the course of this proceeding and in which they have kept me advised of the ongoing status of this case.

David F. Barbour  
Administrative Law Judge  
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