

CCASE:
SOL (ROBERT TEANEY) V. BLACK MOUNTAIN
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SECRETARY OF LABOR, : DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 92-867-D
ON BEHALF OF : MSHA Case No. BARB CD-92-14
ROBERT C. TEANEY, :
Complainant : No. 1 Mine
:
ROBERT C. TEANEY, :
Intervenor :
v. :
:
BLACK MOUNTAIN COAL MINING, :
INCORPORATED, :
Respondent :
:
ROBERT C. TEANEY, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. KENT 93-264-D
: MSHA Case No. BARB CD-92-53
BLACK MOUNTAIN COAL MINING, :
INCORPORATED, : No. 1 Mine
Respondent :

DECISION APPROVING SETTLEMENT

Appearances: Donna E. Sonner, Esquire, Office of the
Solicitor, U.S. Department of Labor,
Nashville, Tennessee, for the Secretary;
Tony Opegard, Esquire, Appalachian Research
and Defense Fund of Kentucky, Inc., for
Intervenor, and Complainant Robert C. Teaney;
William A. Hayes, Esquire, Middlesboro,
Kentucky, for Respondent

Before: Judge Melick

These cases are before me upon Discrimination Complaints under Section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq. (the Act). Before and at hearings the parties filed motions to approve settlement agreements and to dismiss the cases. The terms of the settlement are attached hereto as Appendix A. I have considered the representations and documentation submitted in these cases and I conclude that the proffered settlement is appropriate.

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WHEREFORE, the motion for approval of settlement is GRANTED. Accordingly, Respondent is directed to: (1) pay Robert Teaney within 30 days of the date of this decision backpay of \$3,600 and interest of \$400; (2) expunge the employment records of Robert C. Teaney of all references to the circumstances involved in this matter; (3) post a copy of this decision, including Appendix A, at the mine office for 60 days from the date of receipt; and (4) pay a civil penalty (in Docket No. KENT 92-867-D) of \$125 to the Secretary of Labor within 30 days of the date of this decision. Furthermore, these Discrimination Proceedings are DISMISSED.

Gary Melick
Administrative Law Judge

Distribution:

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APPENDIX A

*MOTION TO APPROVE SETTLEMENT

The parties, by their undersigned attorneys, hereby move the Administrative Law Judge to approve the settlement set out below. This motion is filed pursuant to 29 C.F.R. 2700.30. As reasons for this motion the parties state as follows:

1. On July 16, 1991, the Secretary of Labor filed a complaint against Respondent. The complaint alleged that Robert C. Teaney was the victim of unlawful discrimination by Respondent in that he was transferred to a belt head position from a roof bolter operator position after he called the Kentucky Department of Mines and Minerals to report an electrical hazard. Subsequently, the roof bolter operators received an increase in pay of \$1.00 per hour, which caused Teaney to suffer a loss of compensation from the time of his transfer until September 18, 1991, when he ceased work due to injury. Teaney also worked from employer from April 27, 1992 until June 2, 1992, when Teaney ceased working due to aggravation of previous injuries. The complaint alleged a violation of 105(c) of the Act [30 U.S.C. 815]. The Secretary's complaint sought certain relief, namely a finding that Teaney was unlawfully discriminated against, an order requiring Respondent to pay back wages to Teaney, an order directing that interest be added to the back pay, an order directing Respondent, its officers, agents, servants, employees and all other persons in active concert or participation with them, to cease and desist discriminatory activities directed toward their employees, for an order that Teaney's employment record be completely expunged of all references to the circumstances involved in this matter, and an order assessing a civil penalty. If the Secretary's witnesses were called to a hearing, they would testify as described above.

2. If Respondent's witnesses were called to a hearing, they would admit that Teaney was transferred to the belt head position from the roof bolter operator position, but would assert that the transfer was due to Teaney's being unable to operate the bolter fast enough. They would admit that the roof bolter operators received an increase in pay subsequent to Teaney's transfer.

3. The parties have discussed the alleged violations and the statutory criteria stated in Section 110 of the Act.

4. Pursuant to these discussions, the parties have negotiated a settlement, the details of which follow.

*/ As amended at hearing

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5. Respondent does not have a history of previous 105(c) violations in the previous 24 months.

6. The violation was determined to involve high negligence. The gravity of the violation was high.

7. Respondent is a medium-sized operator.

8. The penalty agreed to will not affect the operator's ability to continue in business.

9. Respondent has demonstrated good faith in prompt compliance by agreeing to repay the back wages due plus interest.

10. Respondent agrees to pay Robert C. Teaney back wages of \$3,600.00 and interest of \$400.00 within 30 days of the date of the decision by the Administrative Law Judge.

11. Respondent agrees that Teaney's employment record shall be expunged of all references to the circumstances involved in this matter.

12. Respondent agrees to comply with the requirements of Section 105(c) of the Act and recognizes the right of miners to make safety complaints. This agreement in no way constitutes an admission of violations of section 105(c) in the instant cases, except for proceedings under the Act.

13. Respondent shall pay to the United States Department of Labor a civil penalty in the amount of \$125.00, pursuant to 105(c)(1) of the Act [30 U.S.C. 815(c)(1)]

14. Complainant, Robert C. Teaney, in Docket No. KENT 93-264-D, further agrees to withdraw his complaint in that case in consideration of the settlement herein.

15. It is the parties' belief that approval of this settlement is in the public interest and will further the intent and purpose of the Act.