

CCASE:
SOL (MSHA) V. ADENA FUELS
DDATE:
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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA), ON	:	Docket No. KENT 93-219-D
BEHALF OF DANNY SHEPHERD,	:	BARB CD 92-35
Complainant	:	
	:	Diamond No. 1 Mine
v.	:	
	:	
ADENA FUELS, INCORPORATED,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Barbour

STATEMENT OF THE PROCEEDING

This proceeding concerns a complaint of discrimination filed by the Secretary of Labor ("Secretary") on behalf of Danny Shepherd and against Adena Fuels, Incorporated ("Adena Fuels") pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act, 30 U.S.C. 815(c)(2). In addition, through counsel, Shepherd has intervened on his own behalf.

Following the filing of the complaint and Shepherd's intervention, the parties engaged in extensive pre-trial discovery and the proceeding was scheduled to be heard on July 7, 1993. However, on July 1, 1993, the parties orally advised me they had settled all aspects of the proceeding and that they intended to file a joint motion requesting approval of their settlement and dismissal of the proceeding.

The joint motion was received on July 14, 1993. The motion states that the parties have reached a full and final settlement of this litigation, including the payment by Adena of a civil penalty of one hundred dollars (\$100) to the Mine Safety and Health Administration. The motion further discloses other confidential monetary aspects of the agreement. Danny Shepherd has signed the motion, as has Adena's president, Charles Yates.

Mindful of the Commission's statement that "Oversight of proposed settlements is an important aspect of the Commission's adjudicative responsibilities . . . and is, in general, committed to the Commission's sound discretion[,]" I have fully reviewed the settlement agreement and have concluded it is reasonable

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and in the public interest. Citing Birchfield Mining Co., 11 FMSHRC 1428, 1430 (August 1989); UMWA v. Utah Power and Light Co., 12 FMSHRC 1548, 1554 (August 1990). Therefore I will approve the settlement and will dismiss this matter.

In addition, to honor the parties desire for confidentiality, I will order the settlement motion to be placed under seal in the record, where it will be subject to review by the Commission or an appellate judicial body only.

ORDER

The parties are ORDERED to comply with all aspects of the settlement, including the payment of a civil penalty to MSHA in the settlement amount stated above, within thirty (30) days of the date of this decision. The Joint Motion to Approve Settlement IS ORDERED SEALED and upon receipt of payment this proceeding is DISMISSED.

David F. Barbour
Administrative Law Judge
(703) 756-5232

Distribution:

Anne T. Knauff, Esq., Office of the Solicitor, U.S. Department of Labor, 2002 Richard Jones Road, Suite B-201, Nashville, TN 37215 (Certified Mail)

Tony Opegard, Esq., Mine Safety Project of the Appalachian Research & Defense Fund of Kentucky Inc., 630 Maxwellton Court, Lexington, KY 40508 (Certified Mail)

Jerry Wayne Slone, Esq., Weinberg, Campbell & Slone, PSC, Adena Fuels, Inc., P.O. Box 727, Hindman, KY 41822 (Certified Mail)

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