

CCASE:
SOL (MSHA) V. HOT ROD COAL
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,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA), ON	:	Docket No. KENT 93-620-D
BEHALF OF EARL SHACKLEFORD,	:	
Complainant	:	BARB CD 93-14
v.	:	
	:	Mine No. 2
HOT ROD COAL COMPANY, INC.,	:	
a corporation; LITTLE BUDDY	:	
CORPORATION, a corporation;	:	
ROBERT HICKS, an individual;	:	
AND EARL RAMEY, JR., an	:	
individual,	:	
Respondents	:	

DECISION

Appearances: Stephen D. Turow, Esq., Office of the Solicitor, U. S. Department of Labor, Arlington, Virginia, Tony Oppeward, Esq., Mine Safety Project of the Appalachian Research & Defense Fund of Kentucky, Inc., Lexington, Kentucky, for Complainant; Charlie R. Jessee, Esq., Jessee & Read, P.C., Abingdon, Virginia, for Respondents.

Before: Judge Feldman

This expedited case is before me upon the request for hearing filed on behalf of the above named respondents under Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," and under Commission Rules 45(c) and (d), 29 C.F.R. 2700.45(c) and (d), to contest the Secretary of Labor's Application for Temporary Reinstatement on behalf of Earl Shackelford. (Footnote 1) Commission Rule 45(d) provides:

1 Mr. Oppeward filed a Notice of Intervention in this proceeding pursuant to Commission Rule 4, 29 C.F.R. 2700.4, seeking intervention on behalf of Shackelford as "the affected miner" in this proceeding. Rule 4(a) provides:

"Party status. A person, including the Secretary or an operator, who is named as a party or who is permitted to intervene, is a party. In a proceeding instituted by the Secretary under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), the complainant on whose behalf the Secretary has filed the complaint is a party and may present additional

The scope of a hearing on an application for temporary reinstatement is limited to a determination as to whether the miner's complaint was frivolously brought. The burden of proof shall be upon the Secretary to establish that the complaint was not frivolously brought.

This matter was called for hearing on July 27, 1993, in Pikeville, Kentucky. Prior to the commencement of trial, the parties engaged in extensive prehearing negotiations. As a result of these negotiations, the parties advised me that they had reached settlement of all matters in dispute. The parties requested that the terms of the settlement remain confidential. The terms of this agreement are reflected in the transcript of this proceeding which is incorporated by reference. The parties' motion for approval of settlement was granted on the record.

Without disclosing the precise terms of the agreement, the Secretary and Shackelford have agreed to withdraw the subject Application for Temporary Reinstatement and the underlying discrimination complaint with respect to Shackelford's employment at the No. 2 Mine. Shackelford has also agreed not to pursue any relief under Section 105(c) of the Act against any other operator

fn. 1 (Continued)

evidence on his own behalf. A miner, applicant for employment, or representative of a miner who has filed a complaint with the Commission under sections 105(c)(3) or 111 of the Act, 30 U.S.C. 815(c)(3) and 821, and an affected miner or his representative who has become a party in accordance with paragraph (b) [the intervention provisions] of this section, are parties." (Emphasis added).

The plain meaning of Rule 4(a) does not provide for intervention by the complaining miner in an action brought under section 105(c)(2) of the Act as the complaining miner is already a party. In addition, Shackelford does not qualify as "an affected miner" under this rule section (as distinguished from the term "the affected miner" used as a basis for this intervention request) since it is clear that this designation refers to an individual other than the complaining miner who is already a party.

Consequently, Opegard's intervention request was denied on the record. However, consistent with Rule 4(a), Opegard was permitted to serve as Shackelford's representative for the purpose of presenting additional evidence not provided by the Secretary on Shackelford's behalf. (Tr. 3-4).

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or business entity in which any of the named respondents have a business interest. Finally, the parties have agreed that the terms of their agreement will be performed within 14 days from the date of my written decision approving this settlement.

ORDER

Accordingly, IT IS ORDERED that the parties shall take appropriate action within 14 days of the date of this decision to fulfill the terms of their settlement agreement. As noted above, the terms of the settlement agreement approved herein are set forth in the transcript of this proceeding and are incorporated by reference. IT IS FURTHER ORDERED that, upon satisfaction of this agreement, the complainant's Application for Temporary Reinstatement IS DISMISSED WITH PREJUDICE.

Jerold Feldman
Administrative Law Judge

Distribution:

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