

CCASE:

SOL (MSHA) V. LAD INING INC.,
(LARRY FLYNN, RONALD CALHOUN)

DDATE:

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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), : Docket No. SE 92-181-D
on behalf of :
JERRY LEE DOTSON, : Mine No. 50
:
v. :
:
LAD MINING INC., LARRY FLYNN, :
AND RONALD CALHOUN, :
Respondent :

FINAL DECISION

APPROVING SETTLEMENT

Appearances: Gretchen M. Lucken, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Petitioner;
Michael W. Boehm, Esq., and Thomas S. Kale, Esq.,
Spears, Moore, Rebman and Williams, Chattanooga,
Tennessee, for Respondent.

Before: Judge Barbour

STATEMENT OF THE CASE

This case is before me upon the complaint of the Secretary of Labor ("Secretary") on behalf of Jerry Lee Dotson, pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977. 30 U.S.C. 815(c)(2)("Act"). The Respondents are Lad Mining, Incorporated ("Lad"), Larry Flynn and Ronald Calhoun. The essence of the Secretary's complaint is as follows: (1) that Dotson was working at Mine No. 50; (2) that the operator for whom Dotson was working went out of business and closed the mine; (3) that shortly, thereafter, the mine reopened under a new operator, Lad, and that Larry Flynn, the owner of Lad, and Ronald Calhoun, the president of the company that leased coal rights to Lad, refused to hire Dotson to continue working at the mine because of Dotson's protected activity and in violation of Section 105(c)(1) of the Act.

A hearing on the merits of the complaint was held in Chattanooga, Tennessee. Following the submission of post-hearing briefs by counsels for the Secretary and the Respondents, I issued a Partial Decision Pending Final Order in which I found the Secretary had proved that Dotson engaged in protected activity, that Respondent Calhoun knew of his activities and was

motivated by them to take adverse action against Dotson and that

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Respondent's Flynn and Calhoun likewise were motivated by the protected activity to take adverse action against Dotson. I further found that the Respondent's failed to rebut the Secretary's case or to establish an affirmative defense to his allegations. Therefore, I concluded the Respondent's had violated Section 105(c)(1) of the Act. Secretary of Labor on behalf of Dotson v. Lad Mining Incorporated, 15 FMSHRC 634, 659 (April 1993).

Having found the Respondent's in violation of the Act, I ordered the parties to confer with respect to the remedies due Dotson and to advise me regarding the results of their discussions. I stated that if the parties were not able to agree regarding the remedial aspects of the matter, a further hearing would be convened. 15 FMSHRC at 660.

DISCUSSION

Subsequently, the parties engaged in extensive discussions and negotiation; and the parties efforts have resulted in a settlement agreement (the "Agreement") between the Complainant and the Respondents. Counsel for the Respondents has submitted a copy of the Agreement for my review. The Agreement is signed by counsel for the Respondents and counsel for the Secretary. The Complainant also has signed it. The Agreement sets forth the terms of the settlement with respect to the remedial aspects of this matter.

In addition to the Agreement the parties have filed a Joint Motion to Dismiss this matter on the basis that the Agreement resolves all outstanding issues to the parties' mutual satisfaction.

CONCLUSION

I have reviewed the Agreement and considered the motion. I conclude and find the settlement disposition is reasonable and in the public interest. Accordingly, the settlement is APPROVED. The parties' joint motion to dismiss with full prejudice is GRANTED.

ORDER

The parties are ORDERED to comply with all provisions of the Agreement. In view of the settlement disposition of this case, this matter is DISMISSED.

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

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Distribution:

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