

CCASE:
SOL (MSHA) V. METTIKI COAL
DDATE:
19931008
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 : PROCEEDING
ADMINISTRATION (MSHA), :
ON BEHALF OF JAMES W. MILLER, : Docket No. York 93-155-D
Complainant : MSHA Case No. MORG CD 93-06
:
v. : Mettiki Mine
:
METTIKI COAL CORPORATION, :
Respondent :

ORDER DENYING RESPONDENT'S MOTION TO DISMISS
ORDER DENYING RESPONDENT'S MOTION TO CONSOLIDATE
ORDER PERMITTING DISCOVERY
NOTICE OF HEARING

Before me are the respondent's motion to dismiss the Secretary's Application for Temporary Reinstatement and, in the alternative, a motion to consolidate this temporary reinstatement proceeding with any future hearing on the merits if the secretary determines that a violation of section 105(c)(1) of the Mine Safety and Health Act of 1977 (the Act), 30 U.S.C. 815(c)(1), has occurred. This order formalizes an October 5, 1993, telephone conference with the parties during which time I denied the respondent's motions, established a schedule for discovery and scheduled a hearing date.

The respondent's motion to dismiss is based on its assertion that the subject complaint is vague and does not clearly address the nexus between the complainant's alleged protected activity and the termination of his employment. In addition, the respondent argues that the Secretary's application for temporary reinstatement is defective because the application was not filed within the 90 day investigatory period provided in Section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3). The Secretary has filed an opposition to the respondent's motion to dismiss.

As a threshold matter, the 90 day investigation period provided in the Act for initiation of a discrimination or related temporary reinstatement action by the Secretary is not jurisdictional in nature. *Gilbert v. Sandy Fork Mining Co.*, 9 FMSHRC 1327 (1987), rev'd on other grounds, 866 F.2d 1433 (D.C. Cir. 1989). In the instant case, James W. Miller's complaint was

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timely filed on June 9, 1993. Although the Secretary's application for temporary reinstatement was filed on September 17, 1993, approximately eight days after the expiration of this 90 day investigatory period, the respondent has failed to demonstrate that it has been unduly prejudiced by this delay. Moreover, in balancing the public interest in mine safety with the respondent's private interest in controlling its workforce, the public interest in ensuring the expeditious reinstatement of employees who are discharged for engaging in protected activities must prevail. *Jim Walter Resources, Inc. v. Fed. Mine Safety & Health Review Commission*, 920 F.2d 738, 746 (11th Cir. 1990). Accordingly, this matter shall be heard and the respondent's motion to dismiss is denied.

Turning to the motion to consolidate, the respondent has conceded that this motion is premature in that the Secretary has not yet initiated a discrimination action. Accordingly, the respondent's motion to consolidate this temporary reinstatement proceeding with any future discrimination proceeding is also denied.

During the course of the October 5, 1993, conference call, in response to the respondent's assertion that Miller's complaint lacks specificity, I granted the respondent's request for discovery. I established a limited discovery schedule whereby both parties will be permitted a maximum of six interrogatories. The interrogatories shall be served on or before October 15, 1993, and answers shall be provided on or before October 25, 1993.

Finally, due to a scheduling conflict of respondent's counsel, it was agreed that this proceeding will be heard at 9 a.m. on November 3 and November 4, 1993, if necessary, in the vicinity of Morgantown, West Virginia. The courtroom location will be specified by subsequent order. The respondent has stipulated that, if temporary reinstatement is ordered, such reinstatement will be retroactive to October 18, 1993.

As noted above, the respondent's motions to dismiss and to consolidate ARE DENIED. IT IS ORDERED that the parties must comply with the discovery procedures discussed herein.

Jerold Feldman
Administrative Judge

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