

CCASE:
SOL (MSHA) V. J & S COLLIERIES
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SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 93-910-D
ON BEHALF OF	:	
HERBERT COLLINS,	:	PIKE CD 93-06
Complainant	:	
	:	
v.	:	No. 1 Mine
J & S COLLIERIES, INC.,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT

Before: Judge Merlin

This case is before me pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977. The parties have filed a joint motion to approve settlement of this matter which states in relevant part:

1. Respondent J & S Collieries agrees to pay Complainant Herbert Collins the sum of Five Thousand Dollars (\$5,000.00) upon entry of the Order Approving the Settlement, said sum being in payment of all claims, including wages, employee benefits and medical expenses. Mr. Collins agrees to relinquish his rights and claims to reinstatement and/or reemployment with J & S collieries or any other company owned by Clifton Street.

2. Complainant Collins' employment with J & S Collieries was terminated on February 11, 1993 and he thereafter obtained employment with an unrelated mining operation. Mr. Collins was unemployed for approximately six weeks.

3. The personnel records maintained by J & S Collieries shall be completely expunged of all information relating to the matters being litigated herein as relates to Mr. Collins.

4. In the event that J & S Collieries is contacted by a prospective employer of Mr. Collins at any time in the future, J & S Collieries agrees not to give Mr. Collins a negative or unfavorable reference regarding his job performance while employed by J & S Collieries. J & S Collieries agrees to state only Mr. Collins job title(s) and dates of employment when contacted by a prospective employer.

5. J & S Collieries and all other companies with the same ownership will not be required to offer employment and/or reinstatement to Mr. Collins at any time in the future.

6. In light of the difficulties and contingencies necessarily attendant to the litigation of the subject case, the complex factual disputes requiring many witnesses, and the fact that Mr. Collins shall be compensated for any economic loss he may have incurred by the terms of this settlement, the parties and Mr. Collins agree that the proposed settlement of this case is appropriate under the circumstances.

7. In consideration of the willingness of J & S Collieries to resolve this claim by payment of the above sum to Mr. Collins, the Secretary agrees that the appropriate civil penalty shall be Two Hundred Dollars (\$200.00).

8. Whereas Section 105(c) of the Mine Act is uniquely designed to benefit the public interest by restitution to those affected by a violation, the Secretary submits that such purposes are fulfilled in this case by the proposed settlement terms.

9. By entering into this Agreement, J & S Collieries, its agents, officers, employees and owners, do not admit that J & S Collieries violated Section 105(c) of the Act or any other provision of the Act.

10. The parties submit that approval of this settlement is in the public interest and will further the remedial purposes of the Mine Act.

11. This Settlement Agreement shall be binding upon the parties hereto and Herbert Collins, and upon each of their respective successors.

Based on the foregoing and noting that both parties have signed the settlement motion, I conclude that the proffered settlement is appropriate under the provisions of the Mine Act.

Accordingly, the motion for approval of settlement is GRANTED.

It is ORDERED that the operator PAY the complainant, Herbert Collins, \$5,000 immediately.

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It is further ORDERED that the operator PAY a civil penalty of \$200 to the Mine Safety and Health Administration within 30 days of the date of this decision.

It is further ORDERED that this case be DISMISSED.

Paul Merlin
Chief Administrative Law Judge

Distribution: (Certified Mail)

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Mr. Herbert Collins, P. O. Box 37, Shelbaine, KY 41562

Mr. Clifton Street, President, J & S Collieries, P. O. Box 3544, Pikeville, KY 41502

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