

CCASE:
SOL (MSHA) V. SANTA FE PACIFIC GOLD
DDATE:
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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
(303) 844-5266/FAX (303) 844-5268

February 18, 1994

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION on behalf	:	Docket No. WEST 92-545-DM
of ROBERT W. BUELKE,	:	WE MD 92-28
Complainant	:	
	:	Docket No. WEST 92-243-A-DM
v.	:	WE MD 91-15
	:	
SANTA FE PACIFIC GOLD CORP.,	:	Rabbit Creek Mine
Respondent	:	

DECISION
ORDER OF DISMISSAL

Appearances: Gretchen M. Lucken, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Complainant;
Charles W. Newcom, Esq., Stephen E. Hosford, Esq.,
Sherman & Howard, Denver, Colorado,
for Respondent.

Before: Judge Cetti

These consolidated discrimination cases are before me on the two complaints of discrimination filed by the Secretary on behalf of Mr. Buelke alleging that he was twice discharged by Santa Fe Pacific Gold Corporation in retaliation for protected safety activity in violation of Section 105(c) of the Mine Act. Pursuant to notice a hearing on the merits was held before me. Both parties were represented by very competent counsel. The record includes over 1,300 pages of transcript of the testimony of 10 witnesses and over 100 exhibits. Both parties filed comprehensive post-hearing and reply briefs.

Just prior to my reviewing my final draft of my decision on liability the parties jointly requested a few more days to complete their final effort to resolve all issues and disputes by an amicable comprehensive settlement of all issues arising out of the facts concerning the discharges.

Although the document filed by the parties is labeled Joint Motion to Approve Settlement it appears from its content that it should properly be construed to be a motion by the Secretary to

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withdraw the discrimination complaints and to dismiss the cases. The motion is based upon Mr. Buelke's agreement to settle these discrimination proceedings, and all other claims against Santa Fe, including a pending civil lawsuit which is resolved in a separate settlement agreement, and to waive his right to permanent reinstatement in exchange for payment of a lump sum which the parties represent fully compensates Mr. Buelke.

I am advised that Mr. Buelke has moved and is presently working in another state. He agrees to officially resign his position with Respondent.

Under the terms of the agreement Respondent Santa Fe agrees to expunge Mr. Buelke's personal records of any reference to events giving rise to these proceedings and to provide Mr. Buelke with a letter stating that he is in good standing with Santa Fe as an employee.

Respondent Santa Fe also agrees to post a notice for 60 days stating that Santa Fe recognizes the rights of miners to make safety complaints to mine management or to MSHA, and that miners who do so will not be punished in any way.

Upon due consideration of this matter I find that the proposed resolution and disposition of these cases is in the public interest and consistent with the remedial purposes of the Mine Act. Accordingly the motion to withdraw the discrimination complaints and to dismiss the cases is GRANTED and the above-captioned cases are DISMISSED with prejudice.

August F. Cetti
Administrative Law Judge

Distribution:

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