

CCASE:
RANDALL PATSY V. BIG "B" MINING
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

RANDALL PATSY, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. PENN 94-132-D
: PITT CD 93-27
BIG "B" MINING COMPANY, :
Respondent :

ORDER OF DISMISSAL

Before: Judge Feldman

On February 24, 1994, I issued a Prehearing Order in the above captioned discrimination proceeding requesting the parties to summarize their expected legal arguments on or before March 18, 1994. The alleged protected activity apparently concerns an incident that occurred on or about October 23, 1992, associated with the preparation of a trailer site in the Peter Rabbit Campgrounds. This matter was investigated by the Mine Safety and Health Administration (MSHA). As a result of its investigation, MSHA concluded that the Commission's decision in citing Cyprus Empire Corporation, 15 FMSHRC 10, 13 (January 1993), that the complainant was not a "miner" as defined by Section 3(g) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 802(g), at the time of the alleged discharge because he was not working in a mine. Consequently, MSHA determined it does not have jurisdiction over the campground job site.

The complainant responded to the Prehearing Order on April 11, 1994. In his response, the complainant expressed doubts about whether or not he had a "good case." He also indicated that there may be "...no sense of pursuing this any farther (sic)." In view of the equivocal nature of the complainant's response, on April 14, 1994, I issued an Order to Show Cause why this matter should not be dismissed by requesting Patsy to unequivocally state whether he wished to pursue his complaint.

Patsy responded on May 4, 1994, indicating that "I feel I would be better off to pursue this as a civil suit locally." I construe Patsy's response as an indication on the part of the complainant that he no longer wishes to pursue this matter.

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Accordingly, the discrimination complaint filed by Randall Patsy in this docket proceeding IS DISMISSED with prejudice. Consequently, the hearing of this case scheduled for June 7, 1994, in the vicinity of Butler, Pennsylvania is canceled.

Jerold Feldman
Administrative Law Judge

Distribution:

Mr. Randall Patsy, R.D. #1, Box 290, E. Brady, PA 16028

Ms. Susan Mackalica, Big "B" Mining Co., Inc., R.D. 1, West Sunbury, PA 16061

/11