

CCASE:
SOL (MSHA) V. MUTUAL MINING
DDATE:
19941130
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,	:	DISCRIMINATION PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
ON BEHALF OF	:	Docket No. WEVA 93-394-D
CLETIS R. WAMSLEY,	:	Hope CD 93-01, 93-05
	:	
ROBERT A. LEWIS,	:	Docket No. WEVA 93-395-D
	:	Hope CD 93-02
JOHN B. TAYLOR,	:	
	:	Docket No. WEVA 93-396-D
CLARK D. WILLIAMSON, AND	:	Hope CD 93-04
	:	
SAMUEL COYLE,	:	Docket No. WEVA 93-397-D
Complainants	:	Hope CD 93-07
v.	:	
	:	Docket No. WEVA 93-398-D
MUTUAL MINING, INC.,	:	Hope CD 93-11
Respondent	:	
	:	Mutual Mine I

DECISION ON DAMAGES, ASSESSMENT OF CIVIL PENALTY,
AND ORDER DENYING RESPONDENT'S MOTION FOR AN
EXTENSION OF TIME IN WHICH TO RESPOND TO THE
SECRETARY OF LABOR'S MOTION FOR SUMMARY JUDGMENT

Before: Judge Amchan

On June 24, 1994, I found that Respondent had violated section 105(c) of the Act in discharging the Complainants on December 21, 1992. I ordered the parties to confer and advise me within 30 days as to whether they were able to stipulate to the amount of back pay due the Complainants and to facts that would allow me to calculate an appropriate civil penalty pursuant to the criteria in section 110(i) of the Act.

The parties were subsequently given an extension of time until August 24, 1994, to respond to this order. In a conference call with counsel for both parties on August 24, 1994, the complainants' counsel advised me that he had submitted a calculation of back pay to Respondent, but had not received a response.

On August 26, 1994, I ordered that: 1) No later than September 14, 1994, Respondent respond to the Complainants' counsel regarding back pay due; 2) No later than September 28, 1994, both parties file with the undersigned their final submissions regarding the amount of back pay due Complainants and the appropriate civil penalty to be assessed.

A motion for summary judgment was filed by the Secretary on October 28, 1994, representing that no formal written response to his calculations had been filed by the Respondent, nor had Respondent provided any suggested calculation of backwages. No timely response to the Secretary's motion has been filed. Instead, on November 14, 1994, the last day on which a response could be timely filed, Respondent filed a request for an extension of time until November 30, 1994. Respondent's counsel states that, "respondent has been unable to gather certain documents and compile certain information relative to the proceeding and get same to counsel"

In view of the fact that Respondent was required by my August 26, 1994, order to respond to the Secretary's calculations no later than September 14, I find that the reasons for which an extension of time is requested are completely inadequate. Therefore, I deny the motion for such an extension. The Secretary of Labor's motion for summary judgment on the issue of damages is GRANTED. Respondent is ORDERED to pay the following amounts to the respective Complainants :

Cletis Wamsley	\$35,880.88
Clark D. Williamson	\$ 5,203.31
Samuel Coyle	\$19,667.81
John B. Taylor	\$23,132.15
Robert A. Lewis	\$46,825.73

The aforementioned figures have been calculated pursuant to the information contained in the Secretary's October 28, 1994 motion for summary judgment and supporting attachments.

Assessment of Civil Penalty

Section 104(a) of the Federal Mine Safety and Health Act provides that a mine operator shall be assessed a civil penalty
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1. The Secretary's motion does not indicate receipt of unemployment insurance compensation by any of the complainants. Commission precedent, Clifford Meek v. Essroc Corporation, 15 FMSHRC 606 (April 1993), is that complainants must subtract any amounts received in unemployment compensation from the back-pay award. Therefore, if any such amounts were received they should be deducted from the amount of back-pay. The Secretary is, therefore, ordered to determine whether any of the complainants received unemployment compensation benefits and, if so, to return those amounts to Respondent within 60 days of this order.

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of not more than \$50,000 for each violation of an MSHA standard, or provisions of the Act. Section 110(i) of the Act provides that the Commission shall assess such penalties, taking into account the operator's history of previous violations, the size of the operator's business, the gravity of the violation, the negligence of the operator, the good faith demonstrated in attempting to achieve rapid compliance after notification of a violation and the effect of the penalty on the operator's ability to stay in business.

The Secretary in its amended complaint proposed a civil penalty of \$15,000. I assess a civil penalty of \$5,000 (\$1,000 per complainant). Although the record indicates that Respondent intentionally discriminated against complainants in the lay-off of December 21, 1992, it also indicates that Respondent has serious financial difficulties. These problems, in conjunction with the large amounts of back-pay being awarded to complainants, lead me to conclude that \$5,000 is an appropriate civil penalty pursuant to the criteria in section 110(i).

ORDER

Respondent is ordered to pay the complainants the amounts set forth herein as back-pay awards within 45 calendar days of this order. Respondent is ordered to pay to the Secretary the civil penalty within 60 days of this order. Upon payment of these amounts these cases are dismissed.

Arthur J. Amchan
Administrative Law Judge

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