

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 14, 2024

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
on behalf of KENNETH M. ADKINS,
Complainant

v.

GREENBRIER MINERALS, LLC,
Respondent

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. WEVA 2024-0248
MSHA Case No. PINE-CD-2024-04

Mine: Middle Fork Surface Mine
Mine ID: 46-09645

DECISION AND ORDER OF TEMPORARY REINSTATEMENT

Before: Judge Sullivan

This matter is before me upon an Application for Temporary Reinstatement filed by the Acting Secretary of Labor on April 16, 2024, pursuant to Section 105(c) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C., § 801, *et seq.*, and 29 C.F.R. § 2700.45.

In her application, the Secretary seeks, on behalf of miner Kenneth M. Adkins (“Complainant” or “Adkins”), the temporary reinstatement of Complainant to his former, or similar, position as a mechanical or mobile equipment operator with Greenbrier Minerals, LLC (“Respondent” or “Greenbrier”), at its various mines at which Complainant worked between late 2022 and March 2024. On April 24, 2024, pursuant to 29 C.F.R. § 2700.45(c), Respondent requested a hearing on this matter.

The parties subsequently presented testimony and documentary evidence at a virtual hearing, via ZOOM for Government, on May 7, 2024. Mr. Kenneth Adkins testified for the Complainant, while Mr. Wayne Cooper, Respondent’s Human Resources Manager, testified for the Respondent.

For the reasons below, I grant the application for temporary reinstatement and retain jurisdiction over this matter until a final disposition of a complaint on the merits.

I. Joint Stipulations

At hearing, the parties provided the following joint stipulations:

1. This proceeding is subject to the jurisdiction of the Federal Mine Safety and Health Review Commission pursuant to sections 105 and 113 of the Mine Act. Judge John Sullivan has authority to issue a decision following the temporary reinstatement proceeding.
2. Greenbrier is a limited liability company and qualifies as a “person” within the meaning of section 105(c) and within the definition of section 103(f). 30 U.S.C. § 802(f).
3. Greenbrier is the operator of the Middle Fork Surface Mine.
4. At all relevant times, the products of the subject mine entered commerce, or the operations or products thereof affected commerce, within the meaning and scope of section 4 of the Mine Act. 30 U.S.C. § 803.
5. Middle Fork Surface is a “mine” as that term is defined in section 3(h) of the Mine Act. 30 U.S.C. § 802(h).
6. Greenbrier was an “operator” with respect to the mine identified above, as that term is defined in section 3(d) of the Mine Act. 30 U.S.C. § 802(d).
7. Kenneth Adkins was previously employed by Greenbrier as a mechanical equipment operator and is therefore a “miner” within the meaning of the Act. 30 U.S.C. § 802(g).
8. Kenneth Adkins started his position with Greenbrier on December 12, 2022.
9. Greenbrier terminated Kenneth Adkins’ employment on March 7, 2024.

Tr. 6-8.

II. Factual Findings

Background

Greenbrier, located in Lyburn, West Virginia, operates four mines under what is alternatively referred to as its Buffalo Creek Mining Complex or Logan Division: the Middle Fork, North Fork, Tony Fork, and Elk Lick Surface Mines. Tr. 14, 74, 76. Before his termination, Adkins worked for Greenbrier, operating machinery during the day shift at any of these surface mines, depending on his work assignment. Tr. 14-15.

Summary of Testimony

At the May 7, 2024, hearing, each party offered a single witness. A summary of the testimony of each witness follows.

Kenneth Adkins

Adkins began working as a mobile equipment operator for Greenbrier on December 12, 2022. Tr. 8. As part of his position, he could and would regularly operate loaders, dozers, and graders. Tr. 96.

When he started, Adkins informed his supervisor, Rick Hunter, that he preferred not to drive haul trucks, which were also referred to throughout the hearing alternatively as rock, articulating, and lizard trucks. Tr. 20-21, 38. Consistent with this request, Adkins was primarily assigned to dozers and only drove a rock truck occasionally—once or twice a month—when his assigned Dozer 229 was inoperable. Tr. 21.

On his first day of work, Adkins completed onboarding training for experienced miners, which included instruction on recognizing hazards and helping to prevent or correct violations of applicable health and safety standards. Tr. 17-18; Ex. C-1, at 1. Eight months later, Adkins completed experienced miner training that involved additional guidance on spotting, preventing, and correcting hazards and violations. Tr. 18-19; Ex. C-1, at 2-3.

In early September 2023, Adkins began noticing problems with his dozer, and so, he began logging safety complaints on his pre-shift safety checklist form. Tr. 21-23. Admitted at hearing was a record of those periodic daily complaints, which were logged through November 10, 2023. Ex. C-2. Adkins' most frequent notations were regarding a worn out hardbar, a hydraulic leak, and improperly working lights and fire suppression. Tr. 24-28. At hearing, Adkins explained the concerns he had regarding the deficiencies he had noted in the condition of the dozer. Tr. 28-29. Even though Adkins' foreman, Chris Bellomy, reviewed the reports, Adkins saw no indication Greenbrier acted on the concerns he had raised. Tr. 30-31.

At one point while this was occurring, Adkins also observed a text message exchange between foreman Bellomy and either mine superintendent Rick Hunter or maintenance foreman Brian May. Tr. 32. In the exchange, Bellomy's text disclosing that the dozer's hardbar required inspection was met with the response that Greenbrier would "get to it when we can." Tr. 32.

Greenbrier's weeks-long failure to address the dozer safety issues led Adkins to discuss the issues with his wife, who then called a complaint into the Department of Labor's Mine Safety and Health Administration ("MSHA") on November 9, 2023, regarding the issues Adkins had been documenting. Tr. 32-33. MSHA Inspector Paul Milum visited the mine the next day and issued citations which took the dozer out of service for four days. Tr. 33-35, 36; Ex. R-6, at Ex. C. The inspector also concluded that Greenbrier had failed to remedy the conditions properly reported by Adkins on his pre-shift safety checklist. Tr. 36-38.

Following this inspection, Brandon Vance, a Greenbrier safety supervisor, met with day shift miners and discouraged them from calling MSHA with safety concerns without first notifying management. Tr. 40, 92-93. At the meeting, Adkins identified himself as the source of the complaint to MSHA and stated that he had done so only after Greenbrier had failed to address his dozer-related complaints for two months. Tr. 41.

With the dozer undergoing repairs, Hunter instructed Adkins to operate a rock haul truck. Tr. 38-39. Even after the dozer was fixed five days later, Adkins continued to be assigned rock truck duty without receiving additional training on its proper operation. Tr. 39, 41-42, 43. Adkins also feared driving the rock truck because of the scratches on the camera making it difficult to navigate, though he chose not to report these hazardous conditions out of fear of reprisal. Tr. 20.

On Friday, March 1, 2024, Adkins was supposed to operate a grader but was instead assigned to drive a rock truck. Tr. 42-43, 46. That day, Adkins expressed his frustration over the company radio, stating that he felt that his assignment to primarily driving a rock truck was in retaliation for his complaint to MSHA. Tr. 42-43, 49. Adkins felt that “ever since [he] called the inspector in November, [he has] been in a lizard truck or a wiggle truck, unless it was down.” Tr. 43. According to Adkins, everyone at the mines used and listened to that channel on the radio. Tr. 43.

Adkins’ next working shift was Monday, March 4. After the regularly scheduled weekly safety meeting at the start of the shift, superintendent Hunter and the mine manager Ben Collins pulled Adkins aside to privately discuss Adkins’ use of the radio on Friday. Tr. 44-45. Hunter told Adkins that he was not being retaliated against for contacting MSHA and instructed him not to use the radio to make such statements. Tr. 45.

Following this meeting, superintendent Hunter directed Adkins to confirm his daily assignment with foreman Gordon Tomblin, who assigned him to operate a grader at the North Fork and Middle Fork mines. Tr. 46; Ex R-6, at Ex. A, ¶ T. Adkins told Tomblin that he would switch with someone and instead drive a rock truck because he expected to be back on a rock truck sooner or later regardless. Tr. 46; Ex R-6, at Ex. A, ¶ U. Adkins subsequently boarded a bus for the Middle Fork Surface Mine. Tr. 47.

Shortly after, superintendent Hunter pulled Adkins off the bus and arranged for him to report to Wayne Cooper, the Human Resources Manager for Greenbrier. Tr. 47-48. Upon arriving at Mr. Cooper’s office, Adkins explained that he felt retaliated against by Respondent ever since making the MSHA call. Tr. 49. At this point, Mr. Cooper suspended Adkins for three days and assured him that he would be in touch. However, Adkins received no written explanation or paperwork regarding this suspension, and Mr. Cooper never reached out. Tr. 49-50. After not hearing from Mr. Cooper, Adkins returned to work three days later, where mine manager Ben Collins instructed him to return to Mr. Cooper’s office. Tr. 50. While he was in the waiting room, Adkins received a call from Mr. Cooper informing him of his termination. Tr. 51. Again, the Respondent failed to provide any paperwork or written explanation regarding the reasons for Adkins’ termination. Tr. 51-52.

Wayne Cooper

Human Resources Manager Cooper testified that he received a phone call from superintendent Hunter and manager Collins stating that Adkins had refused to operate a grader, whereupon Cooper instructed them to send Adkins to see him to talk and informed them that Greenbrier would be suspending Adkins with intent to terminate on the grounds of insubordination. Tr. 78-79. At Cooper’s office, Adkins confirmed he had refused to operate the grader and had gotten on a different bus intentionally. Tr. 79. While Adkins also told Cooper of his complaint to MSHA, this was the first time Cooper had heard of the incident. Tr. 79. Cooper himself made the decision on Adkins’ discipline and informed him of his three-day suspension for refusing to perform a work assignment. Tr. 79-80.

At hearing, Cooper clarified that the initial three-day suspension was for investigation purposes, and he planned to discuss the matter further with Adkins. Tr. 81, 87. During cross-examination, Mr. Cooper could not point to any other documented instances that contributed to Adkin's termination. Tr. 85-86. He was also unaware whether the company had ever suspended or terminated an employee for insubordinate actions or for switching job assignments. Tr. 86-87. Lastly, Mr. Cooper could not cite any job policy mandating suspension or termination based on such insubordination. Tr. 87.

MSHA Complaint

Three days after his termination, on March 11, 2024, Adkins filed a discrimination complaint with MSHA. He alleged that he was unlawfully discharged from employment after complaining to his employer and MSHA that his work dozer, Co. No. 229, Caterpillar D10-R Dozer, was unsafe to operate. Ex. R-6, at Ex. B. As a result, the Secretary filed the application requesting that Adkins be temporarily reinstated to his former position or a comparable one, pending a final decision on the merits of his complaint. Ex. R-6.

III. Legal Standard

Section 105(c) of the Mine Act prohibits discrimination against miners for exercising a protected right under the Act. 30 U.S.C. § 815(c). The prohibition's purpose is to encourage miners "to play an active part in the [Act's] enforcement." S. Rep. No. 95-181, 95th Cong. 1st Sess. 35 (1977), *reprinted* in Senate Subcomm. on Labor, Comm. on Human Res., 95th Cong. 2nd Sess., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 623 (1978) ("*Legis. Hist.*").

Under section 105(c)(2), a miner that lodges a discrimination complaint is entitled to "immediate reinstatement . . . pending final order on the complaint" if the Secretary finds that the complaint was "not frivolously brought." 30 U.S.C. 815(c)(2). Upon the Secretary's application to the Commission for an order reinstating the miner, an operator may request a hearing on the Secretary's application. 29 C.F.R. § 2700.45(c). Under the Commission Procedural Rules, "the Secretary may limit his [hearing] presentation to the testimony of the complainant. The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and may present testimony and documentary evidence in support of its position that the complaint was frivolously brought." 29 C.F.R. § 2700.45(d).

Nonetheless, the "scope of a temporary reinstatement hearing is narrow, being limited to a determination by the Judge as to whether a miner's discrimination complaint is frivolously brought." *Sec'y on behalf of Collins v. Crimson Oak Grove Res., LLC*, 45 FMSHRC 866, 869 (Oct. 2023), *pet. for rev. filed*, No. 23-13665 (11th Cir. Nov. 3, 2023) (quoting *Sec'y on behalf of Price v. Jim Walter Res., Inc.*, 9 FMSHRC 1305, 1306 (Aug. 1987), *aff'd*, 920 F.2d 738 (11th Cir. 1990); *Sec'y on behalf of Jones v. Kingston Mining, Inc.*, 37 FMSHRC 2519, 2522 (Nov. 2015)). This narrow standard reflects Congress' intent that "employers bear a proportionately greater burden of risk of an erroneous decision in a temporary reinstatement proceeding." *Jim Walter Res.*, 920 F.2d at 748, n.11.

At the hearing, the Judge's sole task is to evaluate the evidence of the Secretary's case to determine whether the complaint "appears to have merit." *Sec'y on behalf of Williamson v. CAM Mining, LLC*, 31 FMSHRC 1085, 1089 (Oct. 2009). When evaluating that evidence, the Judge must not resolve credibility issues, address conflicts in testimony, or weigh the operator's evidence against that of the Secretary. *Id.* at 1089, 1091; *see* 30 U.S.C. § 815(c)(2); *Sec'y on behalf of Ward v. Argus Energy WV, LLC*, 34 FMSHRC 1875, 1879 (Aug. 2012); *Sec'y on behalf of Albu v. Chicopee Coal Co.*, 21 FMSHRC 717, 719 (July 1999) (recognizing that "[i]t [is] not the Judge's duty, nor is it the Commission's, to resolve the conflict in testimony at this preliminary stage of the proceedings"). Thus, under this standard, the Secretary must only prove a non-frivolous claim that the miner engaged in a protected activity that has an arguable connection to an adverse employment action and need not set forth its prima facie case of discrimination. *CAM Mining*, 31 FMSHRC at 1088; *Jim Walter Res.*, 920 F.2d at 744 (explaining that a temporary reinstatement case is "conceptually different" than the underlying case of discrimination").

Even though the Secretary need not prove a prima facie case, the Commission has found that "it is useful [for a Judge] to review the elements of a discrimination claim in order to assess whether the evidence at this stage . . . meets the non-frivolous test. In order to establish a prima facie case . . . a complaining miner bears the burden of establishing (1) that he engaged in protected activity and (2) that the adverse action complained of was motivated in any part by that activity." *Crimson Oak Grove*, 45 FMSHRC at 869 (quoting *CAM Mining*, 31 FMSHRC at 1088 (citations omitted)). The Commission has further held that evidence of discriminatory motive, or a causal nexus, may be shown by circumstantial evidence. *Sec'y on behalf of Hoover v. Moseneca Mfr. LLC d/b/a American Tripoli*, 46 FMSHRC 1, 3-4 (Jan. 2024); *Sec'y on behalf of Chacon v. Phelps Dodge Corp.*, 3 FMSHRC 2508, 2510-11 (Nov. 1981), *rev'd on other grounds sub nom.*, *Sec'y on behalf of Donovan v. Phelps Dodge Corp.*, 709 F.2d 86 (D.C. Cir. 1983). Recognized circumstantial evidence includes: (1) knowledge of the protected activity; (2) hostility or animus towards the miner regarding the protected activity; (3) temporal proximity; and (4) disparate treatment of the complainant. *Chacon*, 3 FMSHRC at 2510-12.

If the Secretary meets her burden of proof, the Judge will issue an order temporarily reinstating the miner. If, however, the Secretary fails to meet this burden, the Judge will dismiss the case. *See, e.g., Sec'y on behalf of Fletcher v. Frontier-Kemper Constructors, Inc.*, 34 FMSHRC 2189 (Aug. 2012) (ALJ).

IV. Disposition

The Secretary has more than sufficiently demonstrated that Adkins' discrimination complaint to MSHA was not frivolously brought. The documentary evidence and testimony presented by the Secretary establish that there is reasonable cause to believe there may be a causal nexus between the protected activity in which Adkins engaged and his subsequent termination.

a. Protected Activity

First, there is sufficient evidence at this stage to establish Adkins engaged in a protected activity. Protected activity can include making a complaint to an operator or its agent about unsafe equipment, *see, e.g., Sec'y on behalf of Knotts v. Tanglewood Energy, Inc.*, 19 FMSHRC 833, 837 (May 1995), or an alleged danger or safety or health violation. *See, e.g., Sec'y on behalf of Davis v. Smasal Aggregates & Asphalt, LLC*, 28 FMSHRC 172, 175 (Mar. 2006) (ALJ).

In this case, Adkins made a complaint to both the operator and eventually MSHA. As background, the training Adkins completed where he learned to spot, prevent, and correct hazards or violations of safety standards, is indirect evidence that Greenbrier expected its miners to assist in ensuring a safe workplace with properly functioning machinery. Tr. 17-18. Such expectation is amplified by Greenbrier's use of pre-shift safety checklists. *See, e.g., Ex. C-1*. Adkins used these checklists as intended when he raised his safety concerns regarding the worn out hardbar, hydraulic leak, and non-functioning lights and fire suppression. Ex. C-1.

The evidence suggests that the mine foreman Chris Bellomy reviewed and signed off on most of these pre-shift reports but Greenbrier did not take any further action. Ex. C-1. After Greenbrier failed to address the two-month long concerns lodged in the pre-shift reports, Adkins spoke with his wife who then contacted MSHA with his complaints, which prompted an MSHA inspection resulting in citations alleging violation with respect to the dozer's condition. Tr. 32-34. Either action by Complainant—bringing his concerns to the attention of mine management or filing an MSHA safety complaint—constitutes a protected activity.

Adkins' use of the company radio to express his frustration and complain about his perception that he had been retaliated against by the company for his safety complaints to the operator and MSHA can also qualify as protected activity. Tr. 42-43. In enacting the Mine Act, Congress indicated that the concept of protected activity “be construed expansively to assure that miners will not be inhibited in any way in exercising any rights afforded by the legislation.” S. Rep. No. 95-181, at 36, *Legis. Hist.* at 624. Given his history of safety complaints to the operator and MSHA, Adkins' radio broadcast regarding perceived retaliation can be considered to fall within the expansive scope of rights protected under the Mine Act, particularly in light of section 105(c)(1)'s prohibition against such retaliation.

b. Adverse Employment Action

Next, I find that the Secretary provided sufficient evidence that Adkins suffered an adverse employment action when he was terminated. Under the plain language of the Act and well-settled Commission precedent, suffering a discharge or termination is an adverse employment action. 30 U.S.C. § 815(c)(1); *see e.g., Moses v. Whitley Dev. Corp.*, 4 FMSHRC 1475, 1478 (Aug. 1982). It is undisputed that Adkins was terminated on March 7, 2024. Tr. 8.

c. Causal Nexus

Given the evidence presented by the Secretary, I further find that a connection can reasonably be drawn between Adkins' safety complaints and his subsequent discharge. To reach this conclusion, I will discuss each *Chacon* factor in turn.

i. Knowledge

Although Respondent argues that Mr. Cooper had no knowledge of the protected activity when he made the decision to terminate Adkins (Tr. 101-103), the Secretary need not prove that the operator had actual knowledge of the activity, only that there is a non-frivolous issue as to knowledge. *Chicopee Coal Co.*, 21 FMSHRC at 718. At this stage, I need not make a credibility determination as to Mr. Cooper's testimony. Regardless, the evidence shows that Adkins had expressed his frustration over the company radio regarding the retaliation following his safety complaints a few days before his meeting with Mr. Cooper. Tr. 42-43. Mr. Cooper's testimony also indicates that he consulted superintendent Hunter and manager Collins prior to deciding to suspend or terminate Adkins. Tr. 78-79. The timing of the radio broadcast and the conversations with Hunter and Collins suggest that Mr. Cooper could have reasonably known of the protected activity, especially given the evidence of the widespread use of the radio channel at the mines. Tr. 43.

In any event, the finding that Greenbrier essentially requests here—that Cooper decided to terminate Adkins solely based on his limited knowledge of the events of the morning of March 1—would require an extensive inquiry into the communications between Cooper and several other Greenbrier management personnel. Such an inquiry is beyond the limited scope of this proceeding, and much more appropriate for the merits stage of a discrimination case. *See, e.g., Turner v. Nat'l Cement Co. of California*, 33 FMSHRC 1059, 1067-68 (May 2011).

ii. Temporal Proximity

The Commission has found that “[a]dverse action under circumstances of suspicious timing taken against the employee who is [a] figure in protected activity casts doubt on the legality of the employer's motive.” *Chacon*, 3 FMSHRC at 2511. There is no hard and fast rule for this element; “surrounding factors and circumstances may influence the effect to be given to such coincidence in time.” *Sec'y on behalf of Hyles v. All. Am. Asphalt*, 21 FMSHRC 34, 47 (Jan. 1999) (citations omitted). Improper motive has been found in instances in which there were varying periods of time between the protected activity and the adverse action, including up to a few months. *See e.g., Pero v. Pero v. Cyprus Plateau Mining Corp.*, 22 FMSHRC 1361, 1365 (Dec. 2000) (holding that an adverse employment action four months after a protected activity constituted close temporal proximity where the operator had knowledge of the protected activity).

Considering the evidence presented by the Secretary, I find reasonable cause to believe there is sufficient coincidence in time between the safety complaints and Adkins' termination. The Complainant's primary protected activities occurred a little less than four months before the termination. Tr. 33-34, 40-41, 42-43, 51. After learning of Adkins' call to MSHA, Respondent

immediately transferred him to rock haul truck service, a piece of machinery that Adkins had no additional training to operate. Tr. 38-39. Even after his dozer was fixed, Respondent did not switch Adkins back to that machinery. Tr. 39, 41-42, 43.

Moreover, if Adkins' expression of his concern regarding retaliation over the radio is viewed as an additional protected act, the gap between his protected activity and his suspension and eventual termination is reduced to a few days, which easily satisfies the coincidence in time factor. Tr. 42-43, 51; *see e.g., Sec'y on behalf of Houston v. Highland Mining Co.*, 35 FMSHRC 1081, 1093 (Apr. 2013) (ALJ) (holding that a five-day gap between the adverse action and protected activity constituted circumstantial evidence of nexus); *Chacon*, 3 FMSHRC at 2511. Either timeframe establishes a non-frivolous claim that a casual nexus exists.

iii. Hostility

The Commission has held that the more animus or retaliatory hostility "specifically directed towards the alleged discriminatee's protected activity, the more probative weight it carries." *Chacon*, 3 FMSHRC at 2511. Here there is a non-frivolous issue to this element. Potential circumstantial evidence may include when safety supervisor Brandon Vance discouraged miners from calling MSHA prior to addressing any safety issues with management. Tr. 45-46, 104-05. Such an attitude by Greenbrier management may indicate hostility to a miner's right to raise safety complaints to MSHA under section 103(g) of the Mine Act, 30 U.S.C. § 813(g). *See, e.g., Sec'y on behalf of McGary v. Marshall County Coal Co.*, 38 FMSHRC 2006, 2013-15 (Aug. 2016).

Further evidence of hostility towards Adkins' protected activity is that following the MSHA inspection, Respondent assigned Adkins to the rock truck service despite knowing for over a year of his preference to not operate such machinery. Tr. 20-21, 38. For almost four months, Respondent rarely if ever switched Adkins back to operating other machinery like the dozer. Tr. 39, 41-42, 43. Either of these acts show sufficient evidence to establish a non-frivolous claim that management may have harbored hostility or animus about Adkins' alleged protected activities.

iv. Disparate Treatment

The Secretary does not supply evidence of disparate treatment. However, Mr. Cooper's cross-examination reveals that he was unaware of whether Respondent has ever suspended or terminated a miner for insubordinate actions, including for refusing or switching a job assignment. Tr. 85-87. Additionally, Mr. Cooper testified he had no knowledge of an employment policy suggesting or mandating a suspension or termination based on a miner's refusal to complete an assigned work task. Tr. 87. Because Adkins was terminated for such refusal, there is reasonable cause to find disparate treatment as a non-frivolous issue in this case.

d. Conclusion

For the reasons above, I conclude that the Secretary has established a non-frivolous claim that: (1) Adkins engaged in one or more protected activity; (2) Adkins suffered an adverse


employment action upon his termination; and (3) there was a causal nexus between Adkins' protected activities and the adverse employment action. Given that the complaint "appears to have merit" and there is a non-frivolous issue, Adkins is entitled to temporary reinstatement under section 105(c) of the Mine Act.

V. Order

Accordingly, it is **ORDERED** that Respondent Greenbrier Minerals, LLC, immediately reinstate Complainant Kenneth M. Adkins to his former position, or a comparable position, at the Buffalo Creek Mining Complex at his former rate of pay, overtime, and all benefits he was receiving at the time of his termination.

This Order **SHALL** remain in effect until such time as there is a final determination in this matter by hearing and decision, approval of settlement, or other order of this Court or the Commission.

I retain jurisdiction over this temporary reinstatement proceeding under 29 C.F.R. § 2700.45(e)(4). The Secretary **SHALL** provide a status report on the underlying discrimination complaint no later than **June 9, 2024**.¹ The Secretary's counsel **SHALL** also **immediately** notify my office of any settlement or of any determination that the Respondent did not violate section 105(c) of the Act.



John T. Sullivan
Administrative Law Judge

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¹ Section 105(c)(3) of the Act directs the Secretary to notify a complainant whether a section 105(c) violation occurred within 90 days of the filing of a complaint. 30 U.S.C. § 815(c)(3).