

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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October 19, 2022

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA) on behalf
of GEORGE RICE,
Complainant

v.

NALLY & HAMILTON ENTERPRISES,
Respondent

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. KENT 2022-0118
MSHA Case No. BARB-CD-2022-03

Mine: Meadow Branch Mine
Mine ID: 15-19890

**ORDER GRANTING MOTION TO DISSOLVE ORDER
GRANTING TEMPORARY ECONOMIC REINSTATEMENT**

Before: Judge McCarthy

This matter is before the undersigned on the Secretary of Labor’s Application for Temporary Reinstatement filed on behalf of miner George Rice pursuant to Section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801, et seq., as amended (“Act”), and 29 C.F.R. § 2700.45.

On September 26, 2022, the undersigned issued an Amended Order Granting Temporary Reinstatement of Rice. On September 27, 2022, the parties submitted a Joint Motion to Approve Temporary Economic Reinstatement Agreement (“Agreement”). The parties agreed that, “[i]f the Secretary notifies Rice that he has decided not to prosecute Rice’s case on the merits, Nally & Hamilton will file a motion with the presiding ALJ to dissolve this Agreement, and Rice will not oppose said motion.” Agreement, 2. On September 28, 2022, the undersigned accepted the Agreement and issued an Order modifying the September 26, 2022 Order.

On October 14, 2022, the Secretary filed a Notice pursuant to 29 C.F.R. § 2700.45(g) that he was not going to file a Discrimination Complaint on Rice’s behalf. On October 18, 2022, the Respondent filed a Motion to Dissolve the Order Granting Temporary Economic Reinstatement.

Federal circuit courts of appeals and Commission judges have ruled that, for 105(c) claims such as this one, any “temporary reinstatement provision ends when the Secretary’s involvement ends” and that “the termination of [a temporary reinstatement] should rest on the Secretary’s determination” to not file a Discrimination Complaint. *Vulcan Const. v. FMSHRC*, 700 F.3d 297, 310, 311 (7th Cir. 2012); *see also N. Fork Coal Corp. v. FMSHRC*, 691 F.3d 735, 744 (6th Cir. 2012); *Panther Creek Mining, LLC*, 39 FMSHRC 2001, 2002 (Oct. 2017) (ALJ);

Black River Coal, LLC, 38 FMSHRC 2869, 2870 (Nov. 2016) (ALJ); *Teck Alaska, Inc.*, 35 FMSHRC 2891, 2893 (Aug. 2013) (ALJ).

After finding insufficient evidence to pursue a Discrimination Complaint, the Secretary's involvement ended. Pursuant to precedent and the Agreement, the September 26, 2022 Amended Order Granting Temporary Reinstatement, as modified by the September 28, 2022 Order, is dissolved.

For the foregoing reasons, the September 26, 2022 Order, as modified by the September 28, 2022 Order, is **DISSOLVED** and the terms of the September 27, 2022 Temporary Economic Reinstatement Agreement are **TERMINATED**. Mr. Rice may elect to file a Discrimination Complaint on his own behalf with the Commission within 30 days' notice of the Secretary's determination. 30 U.S.C. 815(c)(3).

Thomas P. McCarthy

Thomas P. McCarthy
Administrative Law Judge

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