

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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November 6, 2019

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA), on
behalf of TYLER HERRERA,
Petitioner,

v.

FIELD LINING SYSTEMS, INC.,
Respondent.

TEMPORARY REINSTATEMENT
PROCEEDING

Docket No. WEST 2019-0364-DM
MSHA Case No. RM-MD-2019-11

Mine: Freeport-McMoRan Safford Inc.
Mine ID: 02-03131

ORDER GRANTING TEMPORARY ECONOMIC REINSTATEMENT¹

Before: Judge Rae

This matter is before me upon a joint motion to approve the Settlement Agreement for Temporary Economic Reinstatement (“Agreement”) filed on November 4, 2019, pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(2). Section 105(c) prohibits operators from discharging or otherwise discriminating against miners who have engaged in safety related protected activity, and authorizes the Secretary of Labor (“Secretary”) to apply to the Commission for miners’ temporary reinstatement, pending full resolution of the merits of their discrimination complaints. The Secretary seeks an order requiring Field Lining Systems, Inc. (“Respondent”), to temporarily economically reinstate Tyler Herrera (“Herrera”) in lieu of actual temporary reinstatement.

In a Decision and Order issued July 11, 2019, I ordered Respondent to reinstate Herrera to the position he held on April 20, 2019, with restoration of pay, allowances, and benefits retroactive to the date he was discharged. On November 4, 2019, the parties filed for approval of the Agreement, which stated that Respondent stopped employing Herrera on September 3, 2019 and that the parties agreed Respondent will economically reinstate Herrera in lieu of actual reinstatement. The essential provisions of the Agreement are as follows:

1. Respondent agrees to economically reinstate Herrera to his position as laborer effective September 3, 2019. Respondent agrees to pay Herrera at his regular pay,

¹ The Secretary filed this Settlement Agreement for Temporary Economic Reinstatement under the related substantive discrimination docket WEST 2019-0489, which concerns the merits of Herrera’s discrimination claim. This Order is properly filed under docket WEST 2019-0364 as an amendment to the July 11, 2019 Decision and Order.

which is \$910.00 per week at a calculated at a rate of \$14.00 per hour for 50 hours, and an overtime rate of \$21.00 for 10 hours each week.

2. Respondent agrees to pay Herrera retroactively between September 3, 2019 and November 4, 2019, the period for which Herrera should have been employed by Respondent under the July 11, 2019 Decision and Order.
3. Respondent shall provide benefits (including but not limited to health insurance, retirement plan, and seniority accrual) associated with Herrera's employment and consistent with those provided pre-termination. Respondent may deduct all applicable tax withholdings and other withholdings on the same basis as generally required for payment of other benefits pursuant to its policies and practices applicable to other employees.
4. The first payment shall be due to Herrera on Respondent's first regular weekly payday after the date this Agreement is executed by the parties. All subsequent payments shall be due on Respondent's regular weekly paydays. All payments shall be made by regular payroll or certified check to "Tyler Herrera" and sent to the following address:

Tyler Herrera
900 East Hollywood Lot #213
Safford, AZ 85546

Proof of each payment shall be forwarded by email within five days of payment to the undersigned counsel for the Secretary at melendez.veronica@dol.gov.

5. Respondent agrees to provide a neutral job reference for Herrera if contacted by potential employers.
6. If Respondent fails to provide payment and benefits as required by this Agreement, the Commission may sanction it.
7. Herrera's temporary economic reinstatement shall terminate upon a final order on the underlying discrimination complaint or by an order of the Judge.

WHEREFORE, the motion to approve the Settlement Agreement for Temporary Economic Reinstatement is **GRANTED**, and it is **ORDERED** that Field Lining Services, Inc. **TEMPORARILY ECONOMICALLY REINSTATE** Tyler Herrera, in accordance with all terms set forth in the parties' Settlement Agreement for Temporary Economic Reinstatement of November 4, 2019.



Priscilla M. Rae
Administrative Law Judge

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Tyler Herrera, 900 East Hollywood Lot #213, Safford, AZ 85546

/smp