

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

Office of Administrative Law Judges  
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May 22, 2018

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
on behalf of LOUIS SILVA, JR.,  
Applicant

v.

AGGREGATE INDUSTRIES WRC, INC.,  
Respondent

TEMPORARY REINSTATEMENT  
PROCEEDING

Docket No. WEST 2017-265-DM  
MSHA No. RM MD 2017-05

Morrison Plant

Mine ID 05-00864

**ORDER DISSOLVING ORDER OF TEMPORARY REINSTATEMENT**  
**ORDER OF DISMISSAL**

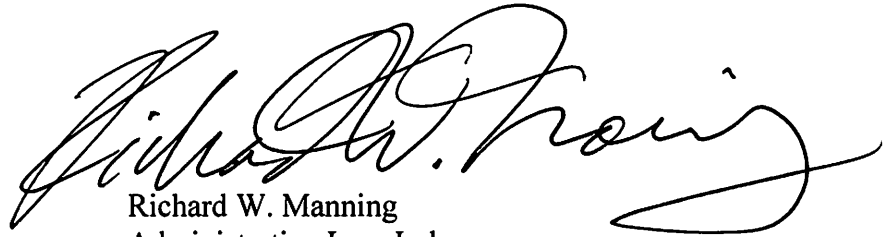
This matter is before me on an application for temporary reinstatement filed by the Secretary of Labor (“Secretary”) on behalf of Louis Silva, Jr, pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815(c)(2), against Aggregate Industries WRC, Inc. Silva was terminated from his position with Aggregate Industries on January 19, 2017.

On March 20, 2017, I granted the parties’ Joint Motion to Approve Terms of Economic Reinstatement and I ordered Aggregate Industries to provide temporary economic reinstatement to Silva. The terms of the reinstatement are described in the motion. As of this date, my order of temporary reinstatement is still in effect.

On April 17, 2018, following an evidentiary hearing, I issued a decision dismissing Louis Silva’s underlying discrimination complaint in Docket No. WEST 2017-482-DM. 40 FMSHRC\_\_\_\_\_ (April 2018) (ALJ). Section 113(d)(1) of the Mine Act states: "The decision of the administrative law judge ... shall become the final decision of the Commission 40 days after its issuance unless within such period the Commission has directed that such decision shall be reviewed .... " 30 U.S.C. § 824(d)(1). No party filed a petition for discretionary review with the Commission under section 113(d)(2)(A) and the Commission did not order the case for review under section 113(d)(2)(B). 30 U.S.C. § 823(d)(2)(A) & (B). As a consequence, my decision in WEST 2017-482-DM will become a final decision of the Commission on May 27, 2018.

In *Sec’y on behalf of Bernardyn v. Reading Anthracite Co.*, 21 FMSHRC 947 (Sept. 1999), the Commission held that a judge’s order of temporary reinstatement must remain in place until his decision on the merits of the discrimination complaint becomes a final decision of the Commission. Because I determined that Aggregate Industries did not discriminate against Silva, he is no longer entitled to temporary economic reinstatement.

For the reasons discussed above, my March 20, 2017 order of temporary economic reinstatement is hereby **DISSOLVED** effective May 27, 2018 and Aggregate Industries is no longer required to comply with the terms of the parties' Joint Motion to Approve Terms of Economic Reinstatement as of that date. Consequently, this proceeding is hereby **DISMISSED**.



Richard W. Manning  
Administrative Law Judge

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RWM