

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 28, 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 JOINT MOTION TO APPROVE TEMPORARY ECONOMIC
REINSTATEMENT AGREEMENT**

Before: Judge McCarthy

This matter is before me 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 (“Mine Act”), and 29 C.F.R. § 2700.45. On September 26, 2022, I issued an Amended Order granting temporary physical reinstatement to Rice. On September 28, 2022, the parties filed a Joint Motion to Approve a Temporary Economic Reinstatement Agreement (“Motion”).

The Agreement is “retroactive to September 22, 2022” and will “remain in effect until and through October 21, 2022.” Should Nally & Hamilton want Rice “to physically return to work on Monday, October 24, 2022, or at any date thereafter, Nally & Hamilton shall inform Rice in writing no less than five (5) days prior to the date it expects Rice to physically return to work that it elects its option for him to physically return to work pursuant to the September 26, 2022 Amended Order Granting Temporary Reinstatement issued by Judge McCarthy, rather than receive the economic temporary reinstatement benefits provided under this Economic TR Agreement.”

Unless Nally & Hamilton exercises its option to have Rice physically return to work after October 21, 2022, “then the Economic Temporary Reinstatement of Rice shall remain in effect until the entry of a final order of the Federal Mine Safety & Health Review Commission (“the Commission”) regarding Rice’s underlying discrimination complaint (MSHA Case No. BARB-CD-2022-03) or until the ALJ’s order approving this Agreement is dissolved, whichever shall occur first - with the exception that the parties may agree to extend this Agreement until another date certain.”

The full terms and conditions of the parties' economic reinstatement agreement are hereby incorporated by reference. I have reviewed the joint settlement motion and I conclude that the proposed economic reinstatement agreement is fair, reasonable, appropriate, and protects the public interest because it will further the intent and purpose of the Mine Act.

For the foregoing reasons, my Amended Order issued September 26, 2022 is hereby **MODIFIED** to reflect the terms of the economic reinstatement agreement described by the parties in their Motion. The parties are **ORDERED** to comply with all of the terms and conditions contained therein.

This Order approving temporary economic reinstatement expires consistent with the terms of the parties' agreement. The Secretary must promptly determine whether or not he will file a complaint with the Commission under section 105(c)(2) of the Act and so advise the Respondent and this tribunal.

Thomas P. McCarthy

Thomas P. McCarthy
Administrative Law Judge

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