

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001

March 4, 2009

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION (MSHA),	:	
Petitioner	:	Docket No. LAKE 2009-314-DM
v.	:	NC MD 2009-03
	:	
CARGILL DEICING TECHNOLOGY,	:	Mine ID 33-01994
Respondent	:	Cargill Deicing Technology/Cleveland

DISMISSAL ORDER

Before: Judge Feldman

Before me for consideration is an Application for Temporary Reinstatement filed by the Secretary of Labor (Secretary) on February 25, 2009, pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, as amended. 30 U.S.C. §815(c)(2). The Secretary seeks an Order requiring the respondent, Cargill Deicing Technology (Cargill), to temporarily reinstate Kurt R. Pluta to his former position of seasonal employment pending final resolution of Pluta's discrimination complaint filed on January 20, 2009, with the Mine Safety and Health Administration.

On March 2, 2009, shortly after filing the application for Pluta's reinstatement, the Secretary filed a Motion to Dismiss this temporary reinstatement action because, as of February 27, 2009, Cargill has terminated all seasonal employees, presumably for legitimate independent business reasons. Since there is no longer a position available to which Pluta could be reinstated, the Secretary has moved to dismiss this proceeding. Neither Pluta nor Cargill oppose the Secretary's motion.

Good cause having been shown, the captioned temporary reinstatement proceeding **IS DISMISSED without prejudice** to the initiation of any action with respect to Pluta's underlying January 20, 2009, discrimination complaint.

Jerold Feldman
Administrative Law Judge

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