

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

601 New Jersey Avenue, N.W., Suite 9500

Washington, D.C. 20001

December 1, 2003

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION (MSHA), on behalf of	:	
JUSTIN HANSEN,	:	Docket No. CENT 2004-39-DM
Complainant	:	RM MD 2003-14
v.	:	
	:	
MARTIN MARIETTA AGGREGATES,	:	Mine ID 25-00998
Respondent	:	Weeping Water Mine

ORDER GRANTING TEMPORARY REINSTATEMENT

This matter is before me upon an Application for Temporary Reinstatement, filed by the Secretary on November 13, 2003, pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(2), for an order requiring Martin Marietta Aggregates (“Martin Marietta”) to temporarily reinstate Justin Hansen to his former position as mechanic/welder at the Weeping Water mine or to a similar position at the same rate of pay. Section 105(c) prohibits operators from discharging or otherwise discriminating against miners who have engaged in safety related protected activity, and authorizes the Secretary to apply to the Commission for temporary reinstatement of miners, pending full resolution of the merits of their discrimination complaints. The Application is supported by Declaration of MSHA Special Investigator Andrew D. Lowe, and a copy of the Discrimination Complaint filed by Hansen on August 29, 2003. The Application alleges that Hansen was fired in retaliation for having reported to the Martin Marietta Ethics Hotline an unsafe practice committed by Maintenance Foreman Ray Fleshman and, because Hansen had obtained a District Court Protection Order as a result of a physical altercation between Fleshman and Hansen.

Martin Marietta filed a Response on November 24, 2003, opposing the Application and requesting a hearing. The parties then jointly moved on November 25, 2003, for an order granting temporary reinstatement, setting forth a proposal that resolves all issues in controversy respecting this proceeding. The essential provisions of the agreement are as follows:

1. Martin Marietta shall temporarily economically reinstate Hansen to his former position until the expiration of the agreement, as specified by the parties.
2. The effective date of the temporary economic reinstatement shall be on the date of this Order.
3. The Secretary, within her discretion, shall file any Discrimination Complaint on behalf of Hansen on or before December 15, 2003, and economic reinstatement

shall continue until final resolution of Hansen's claim, subject to action by the Commission or Court. The Secretary's failure to file a Discrimination Complaint on behalf of Hansen by December 15, 2003, shall render the agreement subject to immediate dissolution.

4. On any Discrimination Complaint filed on behalf of Hansen, the parties shall request that the hearing on the merits be held during February 2004, in Omaha, Nebraska.

WHEREFORE, the Application for Temporary Reinstatement is **GRANTED**, and it is **ORDERED** that Martin Marietta **ECONOMICALLY REINSTATE** Justin Hansen to the position of mechanic/welder, effective this date, in accordance with all terms set forth in the parties' November 25, 2003, settlement agreement.

Jacqueline R. Bulluck
Administrative Law Judge

Distribution: (By Facsimile and Certified Mail)

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