

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

January 29, 2007

MICHAEL SONNEY,	:	DISCRIMINATION PROCEEDING
Complainant	:	
	:	Docket No. CENT 2007-1-DM
v.	:	SC MD 2006-08
	:	
	:	
ALAMO CEMENT CO., LTD.,	:	1604 Plant & Quarry
Respondent	:	Mine ID 41-03019

**ORDER REQUESTING CLARIFICATION**

This case is before me based on a discrimination complaint filed with this Commission pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, as amended, § 815(c)(3) (the Act). The complaint was filed by Michael Sonney against the respondent, Alamo Cement Company, LTD (Alamo). Sonney’s discrimination complaint filed with the Mine Safety and Health Administration alleges:

On 19 May 06 Company injured myself and another employee. I reported these unsafe actions to John Henderson whom took no action to correct identified safety hazards or develop procedures to prevent a reoccurrence. As a result of this, I was discharged on 21 July 06.

I am seeking reinstatement.

The following statutory and case law framework is applicable in a discrimination proceeding. Section 105(c)(1) of the Mine Act provides, in pertinent part:

No person shall discharge or in any manner discriminate against . . . any miner . . . because such miner . . . has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator’s agent . . . of an alleged danger or safety or health violation in a coal or other mine . . . .

30 U.S.C. § 815(c)(1).

Sonney has the burden of proving a *prima facie* case of discrimination. In order to establish a *prima facie* case, Sonney must establish that he engaged in protected activity, and that

the aggrieved action was motivated, in some part, by that protected activity. *See Sec'y of Labor o/b/o Pasula v. Consolidation Coal Co.*, 2 FMSHRC 2786, 2797-2800 (October 1980) *rev'd on other grounds sub nom. Consolidation Coal Co. v. Marshall*, 663 F.2d 1211 (3d Cir. 1981); *Sec'y of Labor o/b/o Robinette v. United Castle Coal Co.*, 3 FMSHRC 803, 817-18 (April 1981).

Alamo may rebut a *prima facie* case by demonstrating, either that no protected activity occurred, or that the adverse action complained of by Sonney was not motivated in any part by protected activity. *Robinette*, 3 FMSHRC at 818 n.20. Alamo may also affirmatively defend against a *prima facie* case by establishing and that it would have taken the adverse actions complained of even if the protected activity had not occurred. *See also Jim Walter Resources*, 920 F.2d at 750, *citing with approval Eastern Associated Coal Corp. v. FMSHRC*, 813 F.2d 639, 642 (4<sup>th</sup> Cir. 1987); *Donovan v. Stafford Constr. Co.*, 732 F.2d 954, 958-59 (D.C. Cir. 1984); *Boich v. FMSHRC*, 719 F.2d 194, 195-96 (6<sup>th</sup> Cir. 1983) (specifically approving the Commission's *Pasula-Robinette* test).

Currently before me are Alamo's motions to compel Sonney's answers to interrogatories, and to compel Sonney's responses to Alamo's request for production of documents. Commission Rule 56(b), 29 C.F.R. § 2700.56(b), permits discovery of any relevant, non-privileged matter that is admissible evidence or likely to lead to the discovery of admissible evidence. However, Sonney's discrimination complaint does not adequately identify the protected activity that serves as the basis for his complaint, the specific adverse action that he asserts was motivated by his protected activity, or how the alleged protected activity is connected to the claimed adverse action. Without additional clarification, I am unable to dispose of Alamo's Motion to Compel. Accordingly, Sonney **IS ORDERED** to provide the following information, **in writing, within fourteen (14) days of this Order**:

- (1) State, with specificity, the protected activity that serves as the basis for your complaint. If you are alleging that you communicated safety related concerns to Alamo supervisory personnel, state the names and job titles of such personnel, and provide a detailed summary of the safety related communications, including the date and time of such communications.
- (2) In your complaint you allege that the company injured you. State, with specificity, the date and nature and extent of your injury, and explain how the injury occurred. State whether you believe the company was at fault for your injury and why. If you assert that you suffered a job related injury, state whether you have filed a worker's compensation claim. If not, explain why.
- (3) State, with specificity, the adverse action you are complaining of. If the adverse action is your July 21, 2006, termination, identify the Alamo management personnel who informed you of your termination and the reasons given by the company for your separation.

(4) Section 105(c)(3) of the Act provides that if discrimination charges are sustained, the Commission shall grant appropriate relief including, but not limited to, an order requiring reinstatement of employment with back pay and interest or such remedy as may be appropriate. During a January 26, 2007, telephone conference you stated you were not seeking back pay, reinstatement or reimbursement of other expenses. At that time, Alamo represented that it would expunge all negative references in your personnel file, if any, that are in any way related to the circumstances in this case. Please state with specificity the relief you are seeking in this proceeding.

Sonney may provide any other information he deems relevant.

**IT IS FURTHER ORDERED** that Alamo shall have ten (10) days to reply to Sonney's submission. As a threshold matter, Alamo should state whether it believes the activities identified by Sonney constitute protected activity and why. Alamo also should state whether Sonney's termination was motivated, in any part, by the protected activity alleged by Sonney. Finally, Alamo should state, with specificity, the date and reasons given to Sonney for his termination, and Alamo should identify the management personnel who were responsible for the decision to terminate Sonney's employment. Alamo may provide any additional information it deems relevant.

Jerold Feldman  
Administrative Law Judge  
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Distribution: (Certified Mail)

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