

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

January 17, 1996

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION (MSHA),	:	
On behalf of WILLIAM DELONG,	:	Docket No. KENT 95-769-D
Complainant	:	MSHA Case No. PIKE CD 95-16
v.	:	
	:	Martiki Surface Mine
BRUCE YOUNG, d/b/a BNA	:	Mine I.D. No. 24-01490
TRUCKING AND YOGO, INC.,	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 95-770-D
On behalf of WILLIAM DELONG,	:	MSHA Case No. PIKE CD 95-16
Complainant	:	
v.	:	Martiki Surface Mine
	:	Mine I.D. No. 24-01490
BRUCE YOUNG, d/b/a BNA	:	
TRUCKING AND YOGO, INC.,	:	
Respondent	:	

DECISION APPROVING SETTLEMENT; ASSESSMENT OF CIVIL PENALTY

The parties have submitted an executed settlement agreement in this matter which includes the following items:

1. Complainant, William DeLong, agrees not to institute any further legal action arising from his alleged discharge of February 23, 1995;
2. Respondents agree to reinstate Mr. DeLong as of October 10, 1995, as a truck driver for Yogo, Inc., at a rate of \$7.00 per hour;
3. Respondents agree that DeLong shall have seniority as a truck driver for Yogo from the date of his first employment with Respondent Bruce Young d/b/a BNA Trucking in August, 1994;
4. Respondents agree to provide to Mr. DeLong and the Secretary of Labor a seniority list of all truck drivers employed by Yogo, Inc., as of October 10, 1995;
5. Respondents agree that layoffs, if they occur, will be based on the aforementioned seniority list;

6. Respondents agree to pay Mr. DeLong \$5,000 for alleged mental and emotional distress in accordance with a schedule set forth in the agreement;

7. Respondents deny any violations of section 105(c) of the Act.

I have considered the representations set forth in settlement agreement and have determined that they are consistent with section 105(c) of the Act. I do note that regardless of Respondents' denial of any violation of the Act, the order approving the settlement in this matter is enforceable to the same extent as any other order of the Commission under section 106(b) of the Act.

ASSESSMENT OF CIVIL PENALTY

The parties have left assessment of the civil penalty to the undersigned judge. Applying the penalty criteria set forth in section 110(i) of the Act, and particularly noting the good faith demonstrated by Respondents in reinstating Mr. DeLong, I conclude that a civil penalty of \$500 is appropriate.

ORDER

The parties motion for approval of the settlement agreement is **GRANTED**. Since the parties have informed the undersigned that BNA Trucking is no longer in business, Respondents Bruce Young and/or Yogo, Inc. are ordered to pay to the Secretary of Labor a civil penalty of \$500 within 30 days of this decision.

Arthur J. Amchan
Administrative Law Judge

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