

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

October 30, 1996

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION (MSHA),	:	
on behalf of DOUGLAS MARTIN,	:	Docket No. KENT 96-389-D
Complainant	:	
v.	:	PIKE CD 96-09
	:	
LOST CREEK MINING, INC.,	:	Mine No. 1
Respondent	:	
	:	

DECISION APPROVING SETTLEMENT

Before: Judge Barbour

This case concerns an application for temporary reinstatement filed pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(2) ("ACT"). The Secretary on behalf of Douglas Martin seeks Martin's immediate reinstatement pending a finding on Martin's associated complaint of discrimination (Docket No. KENT 96-390-D), which alleges that on July 2, 1996, Martin was illegally discharged because he refused to comply with a work order that he believed was unsafe.

On September 27, 1996, the parties orally advised me they had agreed to settle both this temporary reinstatement proceeding and the discrimination proceeding. Subsequently, they filed a motion seeking approval of settlement and dismissal of the proceedings.

Under the terms of the settlement, Respondent is required:

1. [To] Expunge from its personnel files all records of and references to the July 2, 1996 discharge of . . . Martin.

2. On or before September 30, 1996, [to] permanently reinstate Martin to his former employment position with all seniority, status and benefits including, but not limited to, a rate of pay of \$11.25 per hour.

3. [To] pay. . . Martin the sum of \$1,700.00 in satisfaction of damages. . . [in] 3 monthly installment payments by certified check, cashier's check, or money order which shall be made payable to "Douglas Martin" and delivered directly to . . . Martin on the last Friday of each month, the first payment of \$570.00 being due on Friday, October 25, 1996, the second payment of \$570.00 being due on Friday, November 29, 1996, and the final payment of \$560.00 being due on Friday, December 27, 1996.

4. [To] pay a civil money penalty in the amount of \$2,500.00 for the discrimination violation. . . [in] 4 quarterly installment payments of \$625.00 each, the first payment being due on November 1, 1996, the second payment being due on February 1, 1997, the third payment being due on May 1, 1997, and the final payment being due on August 1, 1997 (Joint Motion at 2).

In a decision pertaining solely to Docket No. KENT 96-390-D, I have approved these terms and **ORDERED** Respondent to comply with them. In view of that approval and of the parties agreement that Martin be reinstated, it is clear that the Secretary's application for temporary reinstatement may be **DISMISSED**.

David Barbour
Administrative Law Judge
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