

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, Suite 1000  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

June 26, 2001

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION, on behalf of	:	
DEWAYNE YORK,	:	Docket No. KENT 2000-255-D
Complainant	:	BARB-CD-2000-06
v.	:	
	:	
BR&D ENTERPRISES, INC,	:	Mine ID 15-18028
Respondent	:	

**ORDER AMENDING**  
**ORDER OF TEMPORARY REINSTATEMENT**

Presently before me is a joint request by the parties to enter an agreed order amending the August 29, 2000, Decision and Order of Temporary Reinstatement, directing that Dewayne York be immediately reinstated to the position he held prior to his termination on May 25, 2000. Following entry of that Order, the parties agreed to economic reinstatement, i.e., York would receive the same pay and benefits he had been receiving prior to his termination, but he would not actually return to work. That agreement has been in effect since August 31, 2000, and continues to present. On October 11, 2000, the parties submitted an "Agreed Order on Economic Reinstatement," requesting that the Order of Temporary Reinstatement be modified to reflect their agreement.

Because the parties had not addressed the issue of jurisdiction in their submission, I declined their request, invited their attention to the jurisdictional issue and suggested that they could file an appropriate motion with me or the Commission. The Secretary filed a motion with the Commission, pursuant to Commission Procedural Rule 1(b) and Rule 60(b) of the Federal Rules of Civil Procedure, requesting that the proceedings be reopened and that the case be remanded to allow me to rule on their request. By Order, dated April 20, 2001, the Commission ruled that it did not have jurisdiction to entertain the Secretary's motion because the administrative law judge retains jurisdiction over a temporary reinstatement docket pending final resolution of the formal complaint of discrimination. *Sec'y of Labor on behalf of York v. BR & D Enterprises, Inc.*, 23 FMSHRC 386 (Apr. 2001). The parties have renewed their request that the Decision and Order of Temporary Reinstatement be amended to reflect their agreement to economic reinstatement.

## ORDER

Upon consideration of the joint request of the parties, it is **ORDERED**: that the August 29, 2000, Decision and Order of Temporary Reinstatement is hereby amended to provide that, in lieu of actual reinstatement, the Respondent may, with the agreement of the parties, provide York with economic reinstatement as specified in the attached Agreed Order on Economic Reinstatement.

Michael E. Zielinski  
Administrative Law Judge

Distribution:

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

ALEXIS M. HERMAN, Secretary	)	DISCRIMINATION PROCEEDING
of Labor, United States	)	
Department of Labor,	)	
	)	DOCKET NO. 2000-255-D
Complainant	)	
	)	
v.	)	MSHA CASE NO. BARB-CD-2000-06
	)	
BR&D ENTERPRISES, INC.,	)	
	)	MINE: BRD #3
Respondent	)	

**AGREED ORDER ON ECONOMIC REINSTATEMENT**

Upon agreement of the parties, and being otherwise fully advised, the Decision and Order of Temporary Reinstatement issued on August 29, 2000 is modified as follows:

1. Dewayne York is to be economically reinstated rather than being placed back to work. This economic reinstatement began on August 31, 2000. Mr. York is to be paid on the regularly scheduled Thursday payday, and is to receive the same amount of pay, including overtime pay, as roof bolter operators working on his former section at the mine. His paycheck is to be mailed to his home address.

2. Dewayne York is also to be provided health insurance as an employee, and is to receive any and all benefits which he would receive or to which he would be entitled if he were working as a roof bolter operator.

3. This economic reinstatement of Dewayne York is to last until he is actually put back to work at his former position,

or until there is an ultimate resolution of this matter, by settlement or final decision and order.

4. Respondent's signature on this Agreed Order, by counsel, shall not constitute a waiver of and respondent expressly retains and reserves all rights and defenses to this action to which respondent is entitled at law. Further, it is expressly acknowledged by the parties that respondent does not waive any of the procedural requirements imposed upon the complainant in the prosecution of the claim subject of this action.

So Ordered this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
HONORABLE MICHAEL E. ZIELINSKI  
Administrative Law Judge

Agreed to by the parties:

Respectfully submitted,

HENRY L. SOLANO  
Solicitor of Labor

JAYLYNN K. FORTNEY  
Regional Solicitor

THERESA BALL  
Associate Regional Solicitor

\_\_\_\_\_  
DEWAYNE YORK  
Complainant

\_\_\_\_\_  
J. P. CLINE, III  
Attorney

B R & D Enterprises, Inc.

\_\_\_\_\_  
JOSEPH B. LUCKETT  
Attorney

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Attorneys for Secretary