

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 NEW JERSEY AVENUE, N.W., SUITE 9500
WASHINGTON, D.C. 20001

April 22, 2005

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 2001-23-D
on behalf of MARK GRAY,	:	BARB CD 2000-13
Complainant	:	
v.	:	
	:	
NORTH STAR MINING, INC.,	:	
and JIM BRUMMETT,	:	No. 5 Mine
Respondents	:	Mine ID 15-17437

ORDER LIFTING STAY
AND
DECISION APPROVING SETTLEMENT

The stay in the above-captioned case is hereby **LIFTED**.

This case is before me on remand by the Commission, and involves a discrimination complaint filed by the Secretary of Labor (“the Secretary”) on behalf of Mark Gray, against North Star Mining, Incorporated (“North Star”), and Jim Brummett, under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (“the Act”), 30 U.S.C. § 815(c)(2).¹

By decision issued on April 29, 2003, I found that Gray was not constructively discharged by North Star, and that Brummett did not unlawfully threaten Gray. Consequently, I dismissed the complaint against all Respondents, and disapproved a settlement agreement between the Secretary and Brummett.

As a result of its review, the Commission remanded the case for reconsideration of whether Brummett’s statements to Gray were coercive and, therefore, discriminatory, by application of its test in *Moses v. Whitely Development Corp.*, 4 FMSHRC 1475 (Aug. 1982),

¹ The original complaint was also filed on behalf of Roscoe Ray Young; his complaint was dismissed on April 10, 2002. Mike Caudill was joined with North Star in the original complaint; the parties did not appeal my dismissal of the charges against Caudill and dropped him from the caption in their pleadings.

aff'd, 770 F.2d 168 (6th Cir. 1985).²

The parties have filed Joint Motions to Approve Settlement. I have reviewed the settlement agreements and conclude that they are appropriate under the criteria set forth in section 110(i) of the Act. Under the terms of the settlement agreement between the Secretary and Jim Brummett, Brummett has expressed remorse for his actions and has agreed to pay a civil penalty of \$1,000.00. Respecting the settlement agreement between the Secretary and North Star, North Star has agreed to pay a civil penalty of \$5,000.00 and back wages to Gray in the amount of \$150.00.

The settlement is in the public interest. **WHEREFORE**, the Joint Motions to Approve Settlement are **GRANTED**, and it is **ORDERED** that Jim Brummett **PAY** a civil penalty of \$1,000.00, and that North Star **PAY** a civil penalty of \$5,000.00, within thirty (30) days of this decision. It is further **ORDERED** that North Star **PAY** \$150.00 directly to Mark Gray, within 30 days of this decision. Upon receipt of payment, this case is **DISMISSED**.

Jacqueline R. Bulluck
Administrative Law Judge

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²On January 24, 2005, the Secretary filed a Petition for Reconsideration of the Commissions's January 12, 2005 decision; the Commission denied the petition.