

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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May 5, 1998

SECRETARY OF LABOR, : DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 97-317-D
ON BEHALF OF : MSHA Case No. BARB CD 97-11
MICHAEL BROWN, : MSHA Case No. BARB CD 97-12
Complainant :
v. : Mine No. 1
: Mine ID 15-02755
BOOGAR MAN MINING, INC., :
DEMA COAL COMPANY, INC., :
A & J FUELS, INC., BARRY MOORE, :
and FREDDIE HUNTER, :
Respondents :

DECISION

Before: Judge Hodgdon

This case is before me on a Complaint of Discrimination under section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815(c). The complaint alleges that the Complainant, Michael Brown, was discharged by Respondent Boogar Man Mining, Inc. for complaining about being required to work under unsupported roof and that when he returned for his final paycheck, a month later, he was Athreatened with bodily harm, threatened with a knife, and was intimidated and harassed by Barry Moore and Freddie Hunter [principals of Boogar Man] for filing@a discrimination complaint.¹ For the reasons set forth below, I affirm the Default Decision issued against Respondents Boogar Man Mining, Inc., Barry Moore and Freddie Hunter and I approve the settlement reached between the Complainant and Respondents Dema Coal Company, Inc. and A & J Fuels, Inc.

Procedural Background

On December 1, 1997, an Order to Show Cause was issued to the Respondents in this case, ordering them to show cause why a default decision should not be entered against them for failure to respond to any of the pleadings filed by the Complainant or orders issued in the case. Respondents Dema Coal Company, Inc. and A & J Fuels Inc., responded to the order;

¹ Dema Coal Company, Inc., leased Mine No. 1 to Boogar Man Mining, Inc., and then to A & J Fuels, Inc.

Respondents Boogar Man Mining, Inc., Barry Moore and Freddie Hunter did not. Consequently, on January 16, 1998, a Default Decision was issued against Respondents Boogar Man, Moore and Hunter finding them jointly and severally liable for any and all damages and remedial action ordered at the conclusion of the case and individually liable for the civil penalties assessed against them by the Secretary.

Dema Coal and A & J were permitted to file an answer to the complaint and to respond to the charges of discrimination. A hearing was set for May 5, 1998.

Settlement Agreement

Respondents Dema Coal and A & J and the Secretary on behalf of the Complainant and on her own behalf, by counsel, have filed a motion to approve a settlement agreement. The agreement provides that the Complainant waives his request for permanent reinstatement; that Dema Coal and A & J will pay him back wages of \$1,500.00, which represents the total of all back wages owed him by Dema Coal and A & J; and, that the civil penalty assessed against Dema Coal will be reduced from \$2,500.00 to \$500.00, to be paid in two equal installments. Having considered the representations and documentation submitted, I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act, 30 U.S.C. § 820(i) and is in the public interest.

Accordingly, the motion for approval of settlement is **GRANTED**. The provisions of the agreement will be carried out in the order at the end of this decision.

Enforcement of Default Decision

The Secretary has filed a motion to enforce the default decision against Respondents Boogar Man, Barry Moore and Freddie Hunter. The motion requests the following:

1. A finding that Michael Brown was unlawfully discriminated against, threatened, intimidated and harassed by Respondents in violation of section 105(c) of the Act;
2. An order directing Respondents, their officers, agents, servants, employees, and all other persons in active concert of participation with them, to cease and desist their discriminatory activities directed toward Michael Brown;
3. An order that all references to his discriminatory discharge be completely expunged from the employment record of Michael Brown.
4. An order directing Respondents to pay damages in the amount of \$7,938.60, which is the amount equal to the wages which Michael Brown lost as a result of the discrimination which

occurred, including interest calculated using the short-term federal underpayment rate, all medical and hospital expenses, and any and all other damages suffered and incurred by the miner as a result of and from the date of his discriminatory discharge; and

5. An order assessing civil penalties against Boogar Man Mining in the amount of \$10,000.00, Barry Moore in the amount of \$2,000.00 and Freddie Hunter in the amount of \$3,000.00, for their violations of section 105(c) of the Act.

Based on the January 16, 1998, Default Decision, the motion of the Secretary is **GRANTED**.

ORDER

I find that Respondents Boogar Man Mining, Inc., Barry Moore and Freddie Hunter discriminated against, threatened, intimidated and harassed Complainant Michael Brown in violation of section 105(c) of the Act. Accordingly, it is **ORDERED** that they, as well as their officers, agents servants and employees, shall **cease and desist** their discriminatory activities directed against Michael Brown; that they shall **expunge** from the employment record of Michael Brown all references to his discriminatory discharge; and that they shall, jointly and severally, **pay damages** to Michael Brown in the amount of **\$7,938.60**.

Respondent Boogar Man Mining, Inc., is **ORDERED TO PAY** a penalty in the amount of **\$10,000.00** within 30 days of the date of this decision. Respondent Barry Moore is **ORDERED TO PAY** a penalty of **\$2,000.00** within 30 days of the date of this decision. Respondent Freddie Hunter is **ORDERED TO PAY** a penalty of **\$3,000.00** within 30 days of the date of this decision.

On receipt of payment of the civil penalties by Respondents Boogar Man Mining, Inc., Barry Moore and Freddie Hunter and compliance with the requirements ordered above, the proceeding against them will be **DISMISSED**.

In accordance with the settlement agreement, Respondents Dema Coal Company, Inc., and A & J Fuels, Inc., are **ORDERED TO PAY** back wages to the Complainant in the amount of **\$1,500.00**. Respondent Dema Coal Company, Inc., is **ORDERED TO PAY** a penalty of **\$500.00** as follows: \$250.00 within 30 days of the date of this order and \$250.00 within 60 days of the date of this decision. On payment of back wages and receipt of payment of the penalty, the proceeding against them will be **DISMISSED**.

The hearing scheduled for May 5, 1998, is **CANCELED**.

T. Todd Hodgdon
Administrative Law Judge

Distribution:

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