

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

September 24, 1999

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA), on behalf	:	Docket No. LAKE 99-88-DM
of STEVEN SHAFFER,	:	NC MD 98-04
Complainant	:	
v.	:	Portable No. 2
	:	Mine ID 11-03204
SPROULE CONSTRUCTION CO.,	:	
Respondent	:	

## DECISION

Appearances: Denise C. Hockley-Cann, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois for Complainant;  
Richard P. Reichstein, Esq., Chicago, Illinois for Respondent.

Before: Judge Bulluck

This case concerns a discrimination proceeding filed pursuant to Section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §815(c)(3). The Secretary, on behalf of Steven Shaffer, alleges that Shaffer was unlawfully discharged on May 29, 1998, and seeks reinstatement of Shaffer with back pay, interest and benefits, and expungement of Shaffer's personnel record of all references to the incidents surrounding the protected activity. Additionally, the Secretary seeks orders directing Sproule to cease and desist discriminatory activities directed at all miners, posting of a notice of violation, and imposition of a \$1,500.00 civil penalty.

A hearing on the merits was convened on August 3, 1999, in Dubuque, Iowa, during which MSHA Inspector Stephen Field testified. Based on information gleaned from the inspector's testimony, the Parties entered into a discussion and negotiated a settlement. Under the terms of the agreement, Sproule is required to take the following action:

1. pay to the Secretary, for the benefit of Steven Shaffer, the sum of \$2,000.00;
2. expunge Steven Shaffer's personnel file of any and all references to the incidents giving rise to his May 29, 1998 discharge;
3. post a "Notice to all Employees" affirming its commitment to section 105(c) of the Mine Act, and setting forth miners' rights under section 105(c); and

4. pay a civil money penalty in the amount of \$750.00 for the discrimination violation.

The settlement was approved at hearing, and that determination is hereby confirmed.

**ORDER**

The settlement is appropriate and is in the public interest . **WHEREFORE**, the approval of settlement is **GRANTED**, and it is ordered that Sproule comply with the terms of the settlement agreement, as set forth above, and pay a civil penalty of \$750.00 within 30 days of the date of this decision. Upon Sproule's compliance with all terms of settlement, this proceeding is **DISMISSED**.

Jacqueline R. Bulluck  
Administrative Law Judge  
(703) 756-6210

Distribution:

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