

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

March 21, 1995

SECRETARY OF LABOR, : DISCRIMINATION PROCEEDING  
MINE AND SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. PENN 93-382-D  
ON BEHALF OF : MSHA Case No. Pitt CD 93-01  
JAMES P. LAMONT, :  
Complainant : Tanoma Mine  
: SOL No. 3950131  
TANOMA MINING COMPANY, :  
Respondent :  
:

**DECISION APPROVING SETTLEMENT**

Before: Judge Feldman

This discrimination complaint was filed on June 9, 1993, by the Secretary on behalf of James P. Lamont pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815(c)(2). The subject complaint arises out of an allegation by Lamont that he was illegally discriminated against on September 15, 1992, when he received a disciplinary letter after reporting four accidents in the previous year. The disciplinary letter was issued in conjunction with the respondent's newly implemented accident reduction program. On July 13, 1993, the Secretary filed an amended complaint seeking, in addition to the remedies sought on behalf of Lamont, to assess a civil penalty of \$3,000 against the respondent.

This matter was stayed on August 5, 1993, pending the outcome of the Commission's decision in Swift v. Consolidation Coal Company, 16 FMSHRC 201 (February 1994). Following the Commission's decision in Swift, on November 25, 1994, I lifted the stay and set this case for hearing on December 29, 1994. The case was continued without date after counsel for the Secretary advised that the parties had reached settlement. A joint motion to approve settlement was filed on February 27, 1995.

For the purposes of settlement, the respondent has agreed: to rescind its accident reduction program; to expunge any references to the disciplinary letter in issue from Lamont's personnel records; and to ensure that Lamont will not be discriminated against in the future. With respect to the

proposed civil penalty, the respondent has agreed to pay a reduced civil penalty of \$500.

The parties' settlement terms provide that the terms of resolution are for settlement purposes only. The parties do not admit liability in this matter and the parties agree that nothing herein shall bind the parties in the event of future litigation concerning issues that are similar to this case.

Under the circumstances herein, the parties' joint motion to approve settlement **IS GRANTED**. The respondent shall pay a civil penalty of \$500 within 30 days of the date of this decision. Upon timely receipt of payment and satisfaction of the settlement terms, the discrimination complaint filed on behalf of James P. Lamont **IS DISMISSED** with prejudice.

Jerold Feldman  
Administrative Law Judge

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