

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

May 21, 1996

SECRETARY OF LABOR, : DISCRIMINATION PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. PENN 95-1-D  
on behalf of : MSHA Case WILK CD 94-01  
WILLIAM KACZMARCZYK, :  
Complainant : Ellangowan Refuse Bank  
: v.  
READING ANTHRACITE COMPANY, :  
Respondent :

## DECISION ON REMAND APPROVING SETTLEMENT

Before: Judge Amchan

On March 15, 1996, the Commission remanded this case to me to apportion the stipulated damages between lost overtime wages, which are subject to Federal Income Tax withholding and past-due workers compensation benefits, which are not subject to withholding. Pursuant to my order after the remand, the parties have entered into a joint stipulation that accomplishes this apportionment. The parties have agreed as follows:

1. Complainant sustained damages in the amount of \$4,225.92 for both lost overtime and additional workers compensation payments.

2. A reasonable approximation of the amount of money Mr. Kaczmarczyk would have earned in over-time compensation had he been actively employed by Respondent between October 15, 1993 and September 18, 1994, is \$1,630<sup>1</sup>.

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<sup>1</sup> On May 24, 1995, I concluded that Complainant's transfer from light duty to workers compensation status during this period violated section 105(c) of the Act, 17 FMSHRC 784 (ALJ May 1995).

3. Complainant would have received \$2,595.92 in worker=s compensation payments between October 15, 1993 and September 18, 1994, had he earned \$1,630 in overtime.

4. While Complainant may attempt to recover monies withheld by Respondent from the Internal Revenue Service, or other taxing authority, Reading Anthracite Company is not liable to Complainant for any payment that may be associated with over-withholding on monies paid as damages in this matter.

**ORDER**

I have considered the parties= stipulations in this matter and conclude that they are consistent with the Federal Mine Safety and Health Act. Therefore, I approve the stipulation as a settlement of this matter and **DISMISS** this case.

Arthur J. Amchan  
Administrative Law Judge

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