

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

May 10, 1995

SECRETARY OF LABOR, : DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PENN 95-111-D
ON BEHALF OF : MSHA Case No. PITT CD 94-05
LARRY P. SMITH, :
Complainant : Clutch Run Mine
v. :
DOVERSPIKE BROTHERS COAL CO., :
Respondent :

DECISION

Appearances: James Brooks Crawford, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for the Complainant; R. Henry Moore, Esq., Buchanan Ingersoll, P.C., Pittsburgh, Pennsylvania, for the Respondent.

Before: Judge Koutras

Statement of the Proceeding

This proceeding concerns a discrimination complaint filed by the Secretary of Labor on behalf of Larry P. Smith, against the respondent pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815(c). The complaint alleged that Mr. Smith was laid off, and, in effect discharged, on or about March 13, 1994, because it was thought by the respondent, through its agents, Mine Foreman Charles Ishman and Superintendent Randall Rearick that Mr. Smith had initially alerted the state and federal mine safety enforcement authorities of a mine fan stoppage occurrence on February 24, 1994, at the Clutch Run Mine in which the underground miners were not withdrawn from the mine when the fan was inoperative for a time period greater than 15 minutes. Mr. Smith further alleged that the miners were instructed by Mr. Ishman to tell the federal and state inspectors that the fan was inoperative for only five minutes when, according to Mr. Smith, the fan had been off for at least 45 minutes.

The respondent denied that it had taken any adverse discriminatory action against Mr. Smith or that they discharged him for any protected activity pursuant to the Act. The respondent asserted that Mr. Smith and another employee were laid off for economic reasons. The respondent further stated that after Mr. Smith was laid off, management discovered that he had engaged in certain conduct as superintendent of one of its mines that would have resulted in his termination if it had been discovered while he was employed with the respondent.

A hearing was convened in Indiana, Pennsylvania, on April 13-14, 1995, and the parties appeared and participated fully therein. However, as discussed hereafter, the parties agreed to settle their dispute, and they filed a posthearing settlement motion for my consideration and approval.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 301 et seq.
2. Sections 105(c)(1), (2) and (3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 815(c)(1), and (2) and (3).
3. Commission Rules, 29 C.F.R. ' 2700.1, et seq.

Stipulations

The parties stipulated in relevant part that the respondent is a small to medium size coal mining company and that it is a mine operator subject to the jurisdiction of the Mine Act. They further stipulated that the Commission's presiding judge has jurisdiction to hear and decide this matter.

Discussion

In support of the complaint, the Secretary, on the first day of the hearing, presented the testimony of Mr. Smith, seven current and former employees of the respondent, the MSHA special investigator who investigated Mr. Smith, and a supervisory special investigator. The respondent presented the testimony of two witnesses. On the second day of the hearing, and after the record was opened for the continuation of the respondent's case, counsel for the parties informed me that the parties reached a tentative agreement to settle their dispute and they requested a continuance of the matter in order to pursue it further with their clients and to finalize the agreement. The request was granted, and the hearing was continued.

The parties have now filed their proposed settlement agreement, the terms of which include an agreement by the respondent to pay Mr. Smith a monetary settlement within five days of the Order approving the settlement, with the understanding that such payment shall be in full and complete settlement of the complaint. Additional terms of the settlement are set forth in the settlement agreement executed and signed by the parties, including Mr. Smith. I take note of a letter dated May 2, 1995, from the respondent's counsel to the Secretary's counsel forwarding a cashier's check for Mr. Smith pursuant to the settlement agreement.

Conclusion

After careful review and consideration of the settlement terms and conditions, I find that they reflect a reasonable resolution of the complaint and that the proposed settlement is in the public interest. Since it is apparent that all parties are in accord with the agreement for the settlement disposition of the complaint, I see no reason why it should not be approved.

ORDER

The proposed settlement **IS APPROVED**. The parties **ARE ORDERED** to forthwith comply with all the terms of the agreement. Upon compliance, this matter is dismissed with prejudice.

George A. Koutras
Administrative Law Judge

Distribution:

James Brooks Crawford, Esq., Office of the Solicitor,
U.S. Department of Labor, 4015 Wilson Blvd., Suite 400,
Arlington, VA 22203 (Certified Mail)

R. Henry Moore, Esq., Buchanan Ingersoll, P.C., USX Tower,
57th Floor, 600 Grant Street, Pittsburgh, PA 15219
(Certified Mail)

/lh