

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

September 29, 1997

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. VA 97-9-D
on behalf of BILLY BRANHAM,	:	NORT CD 96-07
Complainant	:	
v.	:	No. 2 Mine
	:	
TEDDY BEAR, INC.,	:	Mine ID 44-06745
Respondent	:	

DECISION

Appearances: Javier Romanach, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for the Complainant;
Greg Matney, Esq., Katz, Kantor, Perkins & Campbell, Tazewell, Virginia, for the Respondent.

Before: Judge Weisberger

This proceeding is before me based on a Complaint filed by the Secretary of Labor (ASecretary@) on behalf of Billy Branham alleging that Teddy Bear, Inc. (ARespondent@) discriminated against him in violation of ' 105(c)(1) of the Federal Mine Safety and Health Act of 1977. Pursuant to notice, the matter was heard in Abingdon, Virginia on June 4, 1997. After the hearing, the parties entered into a discussion concerning settlement of the litigated issues. The parties subsequently reached a settlement and, on September 19, 1997, filed the following AJUDGEMENT@.

1. Respondent Teddy Bear, Inc., is a corporation incorporated under the laws of the State of Virginia, qualified to do business in Virginia, and engaged in the production of coal. It is the owner, lessee, or other person who operates, controls, or supervises Mine No. 2, and is therefore an Aoperator@ as defined in Section 3(d) of the Federal Mine Safety and Health Act of 1977 (hereinafter Athe Mine Act@), 30 U.S.C. ' 802(d).

2. The subject mine No. 2, located in Cleveland, Russell County, Virginia, has products that enter commerce or has operations or products that enter commerce or has operations or products that affect commerce and is a Acoal or other mine@ as defined in Section 3(h)(1) of the Mine Act. (Sic.)

3. Joe L. Spurrier is the President of Teddy Bear, Inc., and is authorized to bind the Respondent to the terms of this judgment.
4. Complainant, Billy D. Branham, worked as a scoop operator and tailpiece man at the subject Mine No. 2, and at all times during his employment at Teddy Bear, Inc., he was a Miner as defined in Section 3(g) of the Mine Act, 30 U.S.C. ' 802(g).
5. On May 31, 1996, Respondent Teddy Bear, Inc., terminated the Complainant's employment at subject Mine No. 2.
6. On June 3, 1996, the Complainant filed a timely complaint with the Secretary alleging discrimination.
7. On January 31, 1997, the Secretary, on behalf of Billy D. Branham, pursuant to the provisions of Section 105(c)(2) of the Mine Act, 30 U.S.C. ' 815(c)(2), filed a complaint with the Federal Mine Safety and Health Review Commission alleging violations of Section 105(c)(1) of the Mine Act, 30 U.S.C. ' 815(c)(1). Specifically, the Secretary alleged that the Respondent illegally discriminated against the Complainant on May 31, 1996, when the Respondent fired the Complainant and that the Respondent took such action against the Complainant for his good faith refusal to work in conditions which he reasonably considered to be unsafe and for his safety complaint to the Respondent, which are protected activities under Section 105(c)(1) of the Mine Act, 30 U.S.C. ' 815(c)(1).
8. On March 4, 1997, the Secretary filed an Amended Complaint to include the Secretary's prayer for the assessment of a civil penalty in the amount of \$3,000 for the Respondent's alleged violation of Section 105(c) of the Act, 30 U.S.C. ' 815(c).
9. The Respondent's Mine No. 2 had an annual tonnage of 7,119 in 1995.
10. Respondent Teddy Bear, Inc., had an annual tonnage of 7,480 in 1995.
11. The Respondent's Mine No. 2 had 92 inspection days for the period covering the 24 months prior to 5/31/96.
12. The Respondent's Mine No. 2 had 168 violations assessed against it by MSHA for the period covering the 24 months prior to 5/31/96.
13. Teddy Bear herewith asserts that it is currently complying with and agrees in the future to comply fully with Section 105(c) of the Mine Act. In particular, Teddy Bear, Inc., agrees that it is not and shall not in any manner discriminate against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners, or

applicant for employment in any coal or other mine subject to the Mine Act because such miner, representative of miners, or applicant for employment has filed or made a complaint under or related to the Mine Act, including a complaint notifying Teddy Bear, inc., its agents, or the representative of the miners at any coal or other mine, of an alleged danger, or safety or health violation in a coal or other mine, or because such miner, representative of miners, or applicant for employment has instituted or caused to be instituted any proceeding under or related to the Mine Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative or miners, or applicant for employment on behalf of himself or others of any statutory right afforded by the Mine Act.

14. Respondent Teddy Bear, Inc., agrees to the payment of backwages and a civil penalty in full resolution of the monetary disputes presented by this matter. The parties have agreed to the payment of \$2,560 by Teddy Bear, Inc., to the Complainant in gross backwages, which resulted from Complainant's termination. The payment to the Complainant shall be made within 30 days from the entry of this judgment, and the payment shall be made by certified check, cashier's check, or money order and shall be made payable to Billy D. Branham. In addition, the Respondent has agreed to the full payment of the assessed penalty of \$3000. This \$3000 payment shall be made within 30 days from the entry of this judgment, and the payment shall be made by certified check, cashier's check, or money order and shall be made payable to the Mine Safety and Health Administration. Both the \$2,560 payment to the Complainant and the \$3,000 payment to the Mine Safety and Health Administration shall be delivered to Javier Romanach at the following address: U.S. Department of Labor, 4015 Wilson Blvd., Room 516, Arlington, VA 22203.

15. Respondent Teddy Bear, Inc., admits that payment of the aforementioned \$3,000 penalty will not adversely (sic) its ability to continue in business.

16. Teddy Bear, Inc., agrees to expunge from Billy D. Branham's personnel file, and all other records maintained by it or its employees, all references to the events underlying and/or related to the Section 105(c) complaint filed by Mr. Branham.

17. Based upon Billy Branham's satisfactory employment history with Teddy Bear, Inc., neither Teddy Bear, Inc., nor any of its agents or employees will provide any negative references concerning Mr. Branham to any prospective employer. Under no circumstances will Teddy Bear, Inc., or its officers, agents or principals inform any prospective employer of the Section 105(c) complaint filed by Mr. Branham, the circumstances and events underlying and/or related to this complaint, nor any other instance in which Mr. Branham may have made safety complaints or exercised protected rights under the Mine Act.

18. Teddy Bear, Inc., agrees to post a notice at the subject Mine No. 2 stating that Teddy Bear, Inc., will not violate Section 105(c) of the Act.

19. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

20. This agreement constitutes the full and complete understanding of the parties with respect to this matter.

21. The complainant has indicated to counsel for MSHA, and by his signature below, that he has reviewed the terms of this agreement and that he is satisfied with the terms of this agreement and has entered into said agreement of his own free will.

22. All parties to this Judgment represent and warrant that the person executing the consent to the entry of this Judgment on their/its behalf is duly authorized to do so.

On the basis of the matters contained herein, I conclude and find that the agreements described in the aforementioned Judgment are appropriate under the criteria set forth in section 110(i) of the Act and find that they satisfy the deterrent intent of the Mine Act and are in the public interest.

In view of the foregoing, IT IS HEREBY ORDERED as follows:

1. Respondent Teddy Bear, Inc., shall pay \$2,560 to Complainant Billy D. Branham in satisfaction of his claims in this proceeding.

2. Respondent Teddy Bear, Inc., shall pay a civil penalty assessment of \$3,000 to MSHA in satisfaction of the alleged violation in these proceedings.

3. The Respondent shall comply forthwith with the terms of the foregoing Judgment. All of the aforementioned payments shall be made by the Respondent within 30 days of the date of this decision and order, and upon full compliance with the foregoing Judgment, this matter is DISMISSED, each party to bear its own fees and other expenses incurred in connection with any stage of this proceeding.

Avram Weisberger
Administrative Law Judge

Distribution:

Javier Romanach, Esq., Office of the Solicitor, U.S. Department of Labor, 4015 Wilson Boulevard, Room 516, Arlington, VA 22203 (Certified Mail)

Greg Matney, Esq., Katz, Kantor, Perkins & Campbell, 996 Ben Bolt, Tazewell, VA 24651 (Certified Mail)

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