

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001

August 17, 2007

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), On behalf of Frederick Martin, Applicant	:	TEMPORARY REINSTATEMENT PROCEEDING
	:	
	:	
v.	:	Docket No. VA 2007-40-D
	:	NORT CD 2007-01
	:	
	:	
DICKENSON-RUSSELL COAL CO., Respondent	:	Mine ID 44-07146 Roaring Fork No. 4
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), On behalf of Frederick Martin, Complainant	:	DISCRIMINATION PROCEEDING
	:	
	:	
v.	:	Docket No. VA 2007-47-D
	:	NORT CD 2007-01
	:	
	:	
DICKENSON-RUSSELL COAL CO., Respondent	:	Mine: Roaring Fork No. 4 Mine ID 44-07146

DECISION

Appearances: Robert S. Wilson, Esq., Nickole Winnett, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for the Complainant; Joseph E. Wolfe, Esq., Wolfe, Williams & Rutherford, Norton, Virginia, for the Complainant; Wade W. Massie, Esq., Penn, Stuart & Eskridge, Abingdon, Virginia, for the Respondent.

Before: Judge Feldman

These matters are before me based on an application for temporary reinstatement, and a discrimination complaint, brought by the Secretary of Labor (the Secretary) on behalf of Frederick Martin against Dickenson-Russell Coal Company (Dickenson) under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 815(c)(2) (the Act). The Secretary's application for the temporary reinstatement of Martin to his former position of employment was stayed on May 21, 2007, as a consequence of Dickenson's agreement to

“economically reinstate” Martin until a full evidentiary hearing on the merits of Martin’s discrimination complaint could be conducted. Specifically, the Secretary and Dickenson agreed that, in lieu of Dickenson reinstating Martin to his job at the Roaring Fork No. 4 Mine, Dickenson agreed to pay Martin, on a bi-weekly basis consistent with Dickenson’s regular payroll practices, a sum of money, net of taxes and other required withholdings, equaling the net amount of wages that Martin would have earned if he had been reinstated to his former position.

The hearing in these matters was conducted on August 7 and August 8, 2007, in Abingdon, Virginia. At the beginning of the second day of the trial, the parties advised that they had reached a settlement agreement with respect to all matters in issue. The Secretary has agreed to withdraw her application for temporary reinstatement in this matter. The Secretary has also agreed to reduce her proposed civil penalty for the subject violation of the provisions of section 105(c)(1) from \$8,500.00 to \$500.00. Finally, Martin has waived his right to seek future employment with Dickenson or any subsidiary of Alpha Natural Resources, Inc.

In return, Dickenson has agreed to pay the \$500.00 civil penalty currently proposed by the Secretary. In addition, Dickenson will pay to Martin and his counsel Joseph E. Wolfe, within ten (10) days from the date of this Decision, an agreed upon sum, less all applicable deductions and withholdings, that shall remain confidential. Dickenson further represents that Martin’s personnel file will reflect that he voluntarily quit on March 7, 2007, and, if contacted by prospective employers, Dickenson will inform them that Martin voluntarily relinquished his job on that day.

I have considered the representations and documentation submitted in these matters, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i), 30 U.S.C. § 820(i) of the Act. **WHEREFORE**, the motion for approval of settlement **IS GRANTED**, and it **IS ORDERED** that, pursuant to their agreement, the Dickenson-Russell Coal Company shall pay to Martin, within ten (10) days from the date of this Decision, the agreed upon relief in complete satisfaction of the captioned temporary reinstatement and discrimination actions. **IT IS FURTHER ORDERED** that the Dickenson-Russell Coal Company pay a civil penalty of \$500.00 within 30 days of this Decision. Upon timely fulfillment of the terms of the parties’ agreement, including timely receipt of the \$500.00 civil penalty payment, the captioned temporary reinstatement and discrimination proceedings **ARE DISMISSED** with prejudice.

Jerold Feldman
Administrative Law Judge

Distribution: (Certified Mail)

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