

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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May 24, 1995

SECRETARY OF LABOR : DISCRIMINATION PROCEEDINGS
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), :
on behalf of :
JAMES HYLES, : Docket Nos. WEST 93-336-DM
 : WEST 93-436-DM
DOUGLAS MEARS, : WEST 93-337-DM
 : WEST 93-437-DM
DERRICK SOTO, : WEST 93-338-DM
 : WEST 93-438-DM
GREGORY DENNIS, : WEST 93-339-DM
Complainants : WEST 93-439-DM
 : WEST 94-021-DM
v. :
 : All American Aggregates
ALL AMERICAN ASPHALT, :
Respondent :

DECISION

Appearances: J. Mark Ogden, Esq., Office of the Solicitor, U.S. Department of Labor, Los Angeles, California, for Complainants;
Lawrence Gartner, Esq., Naomi Young, Esq., Gartner & Young, P.C., Los Angeles, California, for Respondents.

Before: Judge Cetti

These consolidated discrimination proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq. (1988) ("Mine Act"). The proceedings were initiated by the Secretary under Section 105(c)(2) of the Mine Act on behalf of the Complainants James Hyles, Douglas Mears, Derrick Soto, and Gregory Dennis.

At the close of the December 1993 hearings at Riverside, California, the undersigned Judge issued an Order of Temporary Reinstatement from the bench, followed by a written decision a few days later ordering temporary reinstatement of the Claimants.

See Docket Nos. WEST 93-124, WEST 93-125, WEST 93-126, and WEST 93-127. Published in 16 FMSHRC 31 (1994).

On November 2, 1994, a decision on permanent reinstatement was issued and published at 16 FMSHRC 2232. By agreement and request of the parties the issue of back-pay and benefits was severed from the hearing and decision on liability.

The November 2, 1994, decision ordered the operator All American Asphalt to reinstate each of the Claimants to his former position with full back-pay, benefits, and interest, at the same rate of pay and the same status and classification that he would now hold had he not been unlawfully discharged. The decision also directed counsel for the parties to confer with each other with respect to the remedies due each of the Claimants and encouraged the parties to reach a mutually agreeable resolution or settlement of these matters.

The undersigned Judge also retained jurisdiction until the remedial aspects of this case were resolved and finalized.

The November 1994 decision directed the parties to state their respective positions on those compensation issues where they were unable to agree and to submit their respective proposals, with supporting arguments and specific proposed dollar amounts for each category of relief.

At the request of the parties, an extension of time was granted for submission of the position statements. The position statements were filed by the parties on December 31, 1994. The parties could not reach an agreement and requested a hearing on the dollar amount of back-wages and penalties. A hearing was set and then, without objection, was continued at the request of the Secretary to May 8-10, 1995, in Riverside, California.

Just prior to the scheduled May 1995 hearing, the parties, after conference calls on May 5th and May 8th, 1995, notified the Judge that they had reached an agreement on the dollar amounts due. They requested cancellation of the May hearing on the grounds that it would no longer be necessary or productive in view of a stipulation reached by the parties. The scheduled hearing was canceled and the parties were directed to promptly file their stipulation. The stipulation was filed on May 22, 1995.

The stipulation is attached to this decision as Exhibit A. While the stipulation will, of course, speak for itself, it is clear from the stipulation the parties agree to certain dollar amounts of back-pay due each Claimant during a specified time period for the purpose of settling the record. The stipulation, however, is not an agreement as to entitlement thereto. respond-

ent disputes liability and reserves its right for review and appeal.

The parties now want, and are entitled to, a prompt final decision. I accept the stipulation filed by the parties (Ex. A) and, subject to the terms of that stipulation, make the following findings and awards for the agreed period prior to December 17, 1993.

I find that each of the Claimants for the period prior to December 17, 1993, are entitled to back pay plus interest accrued from March 15, 1993, until the date of payment in the following amounts:

<u>Name</u>	<u>Amounts</u>
James Hyles	\$20,837.24 plus interest
Derrick Soto	\$34,347.10 plus interest
Douglas Mears	\$38,656.34 plus interest
Gregory Dennis	\$36,159.32 plus interest

I find civil penalties totaling \$28,000.00 appropriate for Respondent's violations of section 105(g) of the Act as alleged in the above-captioned proceedings. I therefore assess a civil penalty of \$28,000.00 for said violations payable to the Secretary of Labor.

Based on the record and the stipulation filed May 22, 1995, I enter the following:

ORDER

Respondent is ordered to pay the Complainants for lost wage and interest prior to December 17, 1993, in the following amounts:

<u>Name</u>	<u>Amounts</u>
James Hyles	\$20,837.24 plus interest
Derrick Soto	\$34,347.10 plus interest
Douglas Mears	\$38,656.34 plus interest
Gregory Dennis	\$36,159.32 plus interest

Interest shall be computed in accordance with the Commission's decision in Secretary/Bailey v. Arkansas-Carbona, 5 FMSHRC 2042 (December 1983), at the adjusted prime rate announced semi-annually by the Internal Revenue Service for the underpayment and overpayment to taxes. Interest shall be computed from March 15, 1993, until the date of payment of back-pay awarded.

It is further ordered that **RESPONDENT PAY** a civil penalty of \$28,000.00 to the Secretary of Labor for Respondent's violations of section 105(c) of the Mine Act as charged in the above-captioned proceedings. All amounts payable by Respondent pursuant to this order shall be paid within 40 days of the date of this decision.

This is my final decision in the above-captioned dockets and, upon full compliance with the decision, the above-captioned dockets are dismissed.

August F. Cetti
Administrative Law Judge

Distribution:

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