

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

March 14, 1995

RICHARD E. GAWTHROP, : DISCRIMINATION PROCEEDING  
Complainant :  
v. : Docket No. WEVA 94-286-D  
: MSHA Case No. MORG CD 94-02  
TRIPLETT BROTHERS EXCAVATING, :  
Respondent : Grant Town Power Plant

## DECISION

Appearances: Richard E. Gawthrop, pro se, Rivesville,  
West Virginia, and, Thomas G. Dyer, Esq.,  
Clarksburg, West Virginia, on the Proposed  
Order for Relief, for the Complainant;  
Charles E. Anderson, Esq., Fairmont,  
West Virginia, for the Respondent.

Before: Judge Feldman

This case is before me based upon a discrimination complaint filed on June 7, 1994, pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977 (the Act), 30 U.S.C. ' 815(c)(3), by the complainant, Richard E. Gawthrop, against the respondent, Triplett Brothers Excavating, Inc. This matter was heard on October 13, 1994, in Morgantown, West Virginia. On January 23, 1995, a decision on liability was released wherein it was determined that Gawthrop's January 11, 1994, discharge was discriminatorily motivated in violation of section 105(c) of the Act. 17 FMSHRC 64.

With regard to damages, the parties were ordered to confer for the purpose of stipulating the appropriate incidental damages and back pay, plus interest, less deductions for unemployment and earnings from other employment. The parties were also ordered to stipulate to economic reinstatement if the complainant declined reemployment by the respondent. The parties were ordered to file a Proposed Order for Relief if they were able to stipulate to the appropriate relief in this matter. 17 FMSHRC at 76-77.

A joint Proposed Order for Relief was filed on March 6, 1995. The terms of the parties' proposal are that Gawthrop will accept \$10,000 as economic reinstatement in lieu of actual reinstatement. The parties stipulated that Gawthrop's back pay plus interest, compounded from his January 11, 1994, discharge to the present time, less deductions for unemployment and other earnings, amounts to \$9,086. Finally, the parties stipulated to incidental damages of \$2,914 related to additional transportation costs associated with his reemployment as well as other economic losses. Consequently, the parties proposed a total of \$22,000 as the appropriate relief in this case. Payment of \$22,000 was made to Gawthrop by the respondent on February 27, 1995.

**ORDER**

In view of the parties' stipulations, the Proposed Order for Relief **IS GRANTED** establishing the \$22,000 payment to Gawthrop as the appropriate relief under section 105(c) of the Act. **IT IS ORDERED** that all records pertaining to Gawthrop's January 11, 1994, discharge be expunged. This decision and the January 23, 1995, decision on liability constitute the final disposition in this proceeding.

Jerold Feldman  
Administrative Law Judge

Distribution:

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