

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
303-844-3577/FAX 303-844-5268

October 2, 2000

SECRETARY OF LABOR,	:	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2000-188-D
on behalf of LEVI BUSSANICH,	:	
Complainant	:	Centralia Coal Mine
	:	
v.	:	Mine I.D. 45-00416
	:	
CENTRALIA MINING COMPANY,	:	
Respondent	:	

DECISION

Appearances: James B. Crawford, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for Complainant; Timothy M. Biddle, Esq., Crowell & Moring, Washington, D.C., for Respondent.

Before: Judge Manning

This case is before me on a complaint of discrimination brought by the Secretary of Labor on behalf of Levi Bussanich against Centralia Mining Company (“Centralia”) under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §815(c)(2) (the “Mine Act”). A hearing in this case commenced in Tacoma, Washington, on August 22, 2000.

At the start of the hearing, the parties stated that they were trying to negotiate a settlement in this case and asked for additional time to continue these negotiations. I granted their request. At 11:05 a.m., the hearing reconvened at which time the parties announced that they settled all issues in this proceeding and also settled all issues in a separate wrongful termination case brought by Mr. Bussanich in Superior Court for the State of Washington for Lewis County. The basic terms of the settlement were read into the record and the parties subsequently filed a joint Motion to Approve Settlement signed by all parties including Mr. Bussanich.

The proposed settlement contains detailed terms, which can be summarized as follows. Centralia does not admit the truth of any alleged facts, any characterizations of Centralia’s alleged conduct, or any of the allegations set forth in the Secretary’s complaint. The parties entered into the settlement motion for the purpose of settling this case. The settlement cannot be used for any purpose except in proceedings and matters arising under the Mine Act and under any applicable

Mine Act enforcement provision available to enforce the terms of the settlement. The Secretary agrees to reduce the civil penalty for Centralia's violation to \$1,500. Centralia shall pay Mr. Bussanich, within 45 days of the date of this decision, an undisclosed monetary amount to settle Mr. Bussanich's wrongful termination proceeding brought in Lewis County. Approximately one-third of the settlement is for back wages. In consideration for this payment and the settlement of both cases, Mr. Bussanich agrees not to be reinstated as an employee of or seek employment at Centralia or its affiliates. Centralia agrees to return any personal property of Mr. Bussanich, including financial records obtained in the discovery process.

In addition, Centralia agrees to post on the official mine bulletin board a copy of the settlement motion and this decision. A notice shall also be posted stating that all miners are permitted to express safety concerns or make complaints to MSHA without harassment, punishment, or different treatment. This notice will also remind miners to alert mine management of any safety hazards so that the condition can be corrected as quickly as possible. Centralia agrees that within 60 days of the date of this decision, all of its supervisors will receive MSHA-approved training on the subject of miners' rights and the anti-discrimination mandates of section 105(c) of the Mine Act. The details of this training requirement are contained in paragraph six of the parties' motion.

I have considered the representations and documentation submitted in this case, including the discussions at the hearing and the motion to approve settlement, and I conclude that the proposed settlement is appropriate and that the proposed civil penalty complies with the criteria in section 110(i) of the Mine Act. The motion to approve settlement was signed by Mr. Bussanich, as well as counsel for the Secretary and counsel for Centralia.

For good cause shown, the settlement set forth in the parties' motion is **APPROVED** and the joint motion to approve settlement is **GRANTED**. Centralia Mining Company is **ORDERED TO PAY** the Secretary of Labor a civil penalty of \$1,500 within 45 days of the date of this decision. Centralia is also **ORDERED** to comply with the other terms of the motion to approve settlement including the payment of the agreed upon back-pay award to Mr. Bussanich within 45 days of the date of the decision. The parties are **ORDERED** to comply with all the other terms of the motion to approve settlement. Upon payment of the agreed upon amounts, this proceeding is **DISMISSED**.

Richard W. Manning
Administrative Law Judge

Distribution:

James B. Crawford, Esq., Office of the Solicitor, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203-1954 (Certified Mail)

Timothy M. Biddle, Esq., Crowell & Moring, 1001 Pennsylvania Ave., NW Washington, DC 20004-2595 (Certified Mail)

RWM