

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041
April 11, 1996

LANCE A. PAUL, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. WEST 95-228-DM
: MSHA Case No. WE MD 95-04
NEWMONT GOLD COMPANY, :
Respondent : Gold Quarry
: Mine ID 26-00500

SUPPLEMENTAL DECISION

Appearances: Lance A. Paul, pro se, Elko, Nevada, for the
Complainant;
Charles W. Newcom, Esq., Sherman & Howard L.L.C.,
Denver, Colorado, for the Respondent.

Before: Judge Feldman

This case was heard on November 28 and 29, 1995, in Elko, Nevada. This matter is before me based upon a discrimination complaint filed on March 1, 1995, pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977 (the Mine Act), 30 U.S.C. ' 815(c)(3) by the complainant, Lance A. Paul, against the respondent, Newmont Gold Company (Newmont).

On February 22, 1996, a decision on liability was released wherein it was determined that Newmont's November 10, 1994, discharge of Lance Paul was discriminatorily motivated and in violation of section 105(c) of the Mine Act. 18 FMSHRC 181. Consequently, the parties were ordered to confer for the purpose of stipulating to 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 Newmont declined to reinstate Paul to his former, or an equivalent, position.

The Parties filed a joint Stipulation for Settlement on April 8, 1996. The terms of the settlement are as follows:

1. Newmont Gold Company will pay Lance Paul a total of \$147,253.58 for which Lance Paul waives reinstatement with Newmont Gold Company. This settlement will be paid in two checks. One check will be issued in the amount of \$62,933.30 representing back wages, and one lump sum amount of \$84,320.28 to cover interest, COBRA reimbursement, accounting fees, and payment in lieu of reinstatement and in fulfillment of all obligations. The check representing back wages will be adjusted to account for mandated payroll taxes.
2. Newmont Gold Company agrees that it will not appeal the decision of February 22, 1996, of Administrative Law Judge Feldman, if Judge Feldman's final decision and order approves this agreement to settle this matter. Newmont Gold Company agrees that any potential appeal of the civil penalty will be independent of this agreement. Payment will be made immediately upon receiving Judge Feldman's final decision and order.

ORDER

In view of the parties agreement, the terms of the proposed stipulation establishing a total payment of \$147,253.58 to Lance Paul, representing back pay and economic reinstatement, as the appropriate relief under section 105(c) of the Mine Act **IS APPROVED**. Payment shall be made to Paul within 30 days of the date of this decision. **IT IS ORDERED** that Newmont expunge all disciplinary records related to Paul's November 10, 1994, discharge from Paul's employment file. Consistent with the terms of the parties' stipulation, nothing herein shall prejudice Newmont's right to contest the civil penalty proposed by the Secretary in this matter.¹

Upon timely payment to Paul of the agreed upon relief, and, upon Newmont's excision of all pertinent references to

¹ On March 18, 1996, the Secretary filed a Petition for Assessment of Civil Penalty seeking the imposition of a \$9,000.00 civil penalty as a consequence of Paul's discharge.

Paul's discharge in his employment records, this matter **IS DISMISSED**. This decision and the February 22, 1996, decision on liability constitute the final disposition in this proceeding.

Jerold Feldman
Administrative Law Judge

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/mca