

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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Falls Church, Virginia 22041

June 29, 1999

SECRETARY OF LABOR, : DISCRIMINATION PROCEEDINGS
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 97-155-D
ON BEHALF OF : Docket No. WEST 97-156-D
MICHAEL PODOLAK, : Docket No. WEST 97-157-D
RODNEY DAUGHTERY, : Docket No. WEST 97-158-D
CALVIN BENNETT, :
LYNDON GARDNER, : MSHA Case Nos. DENV CD 96-15 and
Complainants : MSHA Case Nos. DENV CD 96-16
22. :
:
ENERGY WEST MINING COMPANY, :
Respondent :
:
SECRETARY OF LABOR, : DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. WEST 99-56-D
ON BEHALF OF MICHAEL PODOLAK, :
Complainant : MSHA Case Nos. DENV CD 98-02
:
v. : Trail Mountain Mine
: Mine ID 42-01211
ENERGY WEST MINING COMPANY, :
Respondent :

DECISION APPROVING SETTLEMENT

Before: Judge Hodgdon

These cases are before me on Complaints of Discrimination under section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c). The parties, by counsel, have filed a motion to approve a settlement agreement.

Background

On July 18, 1996, Energy West employees Michael Podolak, Rodney Daugherty, Calvin Bennett and Lyndon Gardner filed discrimination complaints with the Mine Safety and Health Administration (MSHA) alleging that the company had violated their rights under the Act by announcing at a May 1996 meeting that employees on the graveyard shift would no longer be permitted to withdraw from welding or cutting fumes. On the same day, Mr. Podolak filed a separate complaint alleging that Energy West had discriminated against him on June 26, 1996, by requiring him to remain in welding fumes after he had informed his supervisor that he had been

made ill by the fumes. On October 6, 1997, Podolak filed an additional complaint asserting that Energy West had discriminated against him for his earlier protected activity by transferring him from his regular job on the longwall set-up crew to a position on a rotating shift labor pool, with the result that he suffered a loss of shift differential pay and other benefits.

The Agreement

Energy West has agreed to settle the cases by paying civil penalties of \$1,000.00 each for the section 105(c) violations in Docket Nos. WEST 97-155-D, WEST 97-156-D, WEST 97-157-D and WEST 97-158-D. The Secretary has agreed to move for the withdrawal of the complaint in Docket No. WEST 99-56-D, with the agreement of Mr. Podolak. To reduce the likelihood that such problems will be repeated, the company has agreed to post, for a period of 45 days, on the mine bulletin board where notices to employees are normally posted, a "Notice to All Miners" clarifying its position on withdrawals from welding or cutting fumes and acknowledging that "given the wide range of variables involved, it is possible that there could be circumstances in which a miner may reasonably believe the welding, cutting (burning) fumes he or she is assigned to work in are dangerous." Finally, Energy West agreed to pay to Mr. Podolak \$1,415.00 for wages he lost as a result of his transfer from the graveyard shift longwall set-up crew (by separate check with appropriate deductions), plus an additional \$500.00 to reimburse his expenses incurred in connection with this litigation.

Order

Having considered the representations and documentation submitted, I conclude that the proffered settlement is appropriate under section 105(c) the criteria set forth in section 110(i) of the Act, 30 U.S.C. § 820(i) is and in the public interest. Accordingly, the motion for approval of settlement is **GRANTED**, the Secretary's Motion to Withdraw the complaint in Docket No. WEST 99-56-D is **GRANTED** and that Docket is **DISMISSED** and the Respondent is **ORDERED** to carry out its obligations under this agreement and **TO PAY** civil penalties of **\$4,000.00** within 30 days of the date of this order.

T. Todd Hodgdon
Administrative Law Judge

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