

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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June 27, 2001

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION, on behalf of	:	
GARY DEAN MUNSON	:	Docket No. WEVA 2000-40-D
Complainant	:	MORG-CD-2000-01
	:	
v.	:	
	:	Federal No. 2
EASTERN ASSOCIATED COAL CORP.	:	Mine ID 46-01456
Respondent	:	

**ORDER DENYING MOTION TO ENFORCE ORDER OF  
TEMPORARY REINSTATEMENT WITHOUT PREJUDICE**

Presently before me is a motion by the Secretary for entry of an order enforcing the order of temporary reinstatement previously entered in this case. Respondent has opposed the motion. For the reasons that follow, the motion is denied without prejudice.

On March 10, 2000, following a hearing, a Decision and Order of Temporary Reinstatement was entered, directing Respondent, Eastern Associated Coal Corporation (EACC) to “**REINSTATE** Mr. Munson to the position he held immediately prior to December 6, 1999, or to a similar position, at the same rate of pay and benefits, **IMMEDIATELY ON RECEIPT OF THIS DECISION.**” Munson, however, did not return to work at EACC, because he agreed to economic, as opposed to actual, reinstatement, i.e., Munson accepted an offer from EACC to provide pay and benefits without his physically reporting for work. The parties did not notify the Commission of the economic reinstatement agreement and the March 10, 2000, decision and order remains outstanding.

A few months later, Munson changed his mind about economic reinstatement and requested that he be allowed to return to work. EACC declined his request, taking the position that Munson should be held to his agreement to accept economic reinstatement. The issue was raised with the undersigned administrative law judge, but was not resolved, in part because of a question of jurisdiction. See the order dated September 15, 2000, noting the withdrawal of Respondent’s motion to stay economic reinstatement. No further action was taken on Munson’s request until the filing of the instant motion on May 24, 2001. On June 25, 2001, a Decision on Liability was issued in Commission Docket No. WEVA 2000-58-D, the formal complaint of discrimination filed on Munson’s behalf with the Commission. It was held that EACC

discriminated against Munson in violation of the Act and directed the parties to confer on the relief to be awarded Munson and the amount of an appropriate civil penalty.

While the Commission has recently determined that an administrative law judge retains jurisdiction over a temporary reinstatement docket pending final resolution of the formal complaint of discrimination,<sup>1</sup> there are several questions that have not been addressed by the parties. Accordingly, the present motion will be denied, without prejudice to its refiling with appropriate supporting authority.

As noted previously, the March 10, 2000, decision and order remains outstanding. It is unclear what the Secretary can achieve through the motion to enforce, beyond the presently existing decision and order directing Munson's reinstatement. It seems, therefore, that the Secretary could seek enforcement of that order, either in the appropriate United States Circuit Court of Appeals pursuant to 30 U.S.C. § 816(b) or in a United States District Court pursuant to 30 U.S.C. § 818(a). Unlike an administrative law judge, judges of those courts possess the contempt power and have the capability of compelling compliance with a final order of the Commission. Of course, the Secretary would be met with EACC's defense that Munson agreed to accept economic reinstatement.

The Secretary has stated that Munson has rescinded the economic reinstatement agreement and requested that it be declared "null and void." However, no authority has been cited in support of that request, nor has a legal framework for resolving the issues raised by the motion and EACC's defense even been identified. Also unaddressed are issues such as whether the Commission has jurisdiction to resolve what may be a private contractual dispute raised by EACC's defense, or whether such issues can or should be resolved in the first instance by the Commission or a court.

EACC's opposition to the motion suffers from similar shortcomings. It argues that the economic reinstatement agreement fulfills the primary legislative intent of the temporary reinstatement provision and that Munson should be held to his "binding contractual agreement." However, EACC does not address Munson's purported rescission of the agreement and no legal authority is cited in support of its arguments. EACC likewise did not address the potential jurisdictional issues identified above.

In light of the above, moveant has failed to carry his burden of demonstrating entitlement to the relief requested. Accordingly, the motion will be denied, without prejudice to its being refiled with appropriate supporting authority. Of course, the Secretary is also free to seek enforcement of the March 10, 2000, decision and order through the courts. Ultimate disposition of the merits of his discrimination complaint may also moot the current dispute.

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<sup>1</sup> *Sec'y of Labor on behalf of York v. BR&D Enterprises, Inc.*, 23 FMSHRC 386 (Apr. 2001).

## ORDER

The Secretary's Motion to Enforce Order of Temporary Reinstatement is **Denied**, without prejudice.

Michael E. Zielinski  
Administrative Law Judge

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