

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 Skyline, Suite 1000  
5203 Leesburg Pike  
Falls Church, Virginia 22041

August 8, 2000

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION (MSHA),	:	
<b>on behalf of ROGER DALE DAMRON, II</b>	:	Docket No. WEVA 2000-81-D
Complainant	:	HOPE CD 2000-08
	:	
v.	:	Mine No. 1
	:	Mine I.D. No. 46-08564
TRI-COUNTY MINING, INC.,	:	
Respondent	:	

**DECISION**  
**AND**  
**ORDER OF TEMPORARY REINSTATEMENT**

Appearances: Elizabeth Lopes Beason, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for Applicant;  
Roger L. Kirk, President, Tri-County Mining, Inc., Breden, West Virginia, *Pro Se.*

This case is before me on an Application for Temporary Reinstatement filed by the Secretary of Labor, acting through her Mine Safety and Health Administration (MSHA), on behalf of Roger Dale Damron, II, pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c). The application seeks reinstatement of Mr. Damron as an employee at Mine No. 1, operated by Tri-County, pending a decision on a discrimination complaint he has filed with MSHA. A hearing was held on August 2, 2000, in Logan, West Virginia. For the reasons set forth below, I grant the application and order Mr. Damron’s temporary reinstatement.

At the hearing, the parties announced that an agreement had been arrived at concerning Mr. Damron’s application. At the present time, most employees of Tri-County have been laid-off. Only a few have been called back so far. Consequently, the agreement provides, not for the Applicant’s immediate reinstatement, but for the order in which he will be recalled to work.

The parties have agreed that Jerry Copley, who is presently laid-off, has been an employee of Tri-County longer than Damron and that, therefore, when Tri-County needs to fill the position of drill operator or truck driver, Copley will be offered the position. If Copley turns it down, it will then be offered to Mr. Damron. If Copley takes the job, Damron will be offered the next position, for which he is qualified, that becomes available. Mr. Damron is qualified as a truck driver, drill operator and general utility worker. When recalled, Mr. Damron agrees that he will perform a pre-operational check on any equipment that he is asked to operate and will report any unsafe condition to the operator, so that the operator has an opportunity to correct the condition.

In accordance with the agreement, I conclude that Mr. Damron's complaint has not been frivolously brought and that he is entitled to be temporarily reinstated as agreed upon.

**Order**

The motion to approve settlement is **GRANTED**. Tri-County Mining, Inc., is **ORDERED TO REINSTATE** Mr. Damron as provided in the agreement.

T. Todd Hodgdon  
Administrative Law Judge

Distribution:

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