

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

January 7, 1997

SECRETARY OF LABOR, : DICRIMINATION PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 93-339-D
on behalf of PERRY PODDEY, : MSHA Case No. MORG CD 93-01
Complainant :
 : Coal Bank No. 12
22. : Mine ID No. 46-07062
 :
TANGLEWOOD ENERGY, INC., :
Respondent :

REMAND DECISION
and
ORDER

Before: Judge Koutras

Statement of the Case

This case concerns a decision of November 29, 1993, by former Commission Judge Arthur Amchan, concluding that the respondent violated section 105(c) of the Mine Act in discharging the complainant Perry Poddey on January 6, 1993, and assessing a civil penalty of \$100 against the respondent for the violation, 15 FMSHRC 2401 (November 1993), and a subsequent decision of January 25, 1994, awarding damages and other relief to Mr. Poddey, 16 FMSHRC 176 (January 1994).

Judge Amchan's damages decision reflects that the parties stipulated to the damages amount due Mr. Poddey, and the judge stated as follows in this regard at 16 FMSHRC 176:

* * * * Pursuant to this stipulation, Respondent is hereby ordered to pay Mr. Poddey \$9,094.38. This figure represents the back wages due Mr. Poddey from January 7, 1993, through May 17, 1993 minus \$4,000 received in unemployment compensation benefits from the state of West Virginia. It also includes interest calculated at the short-term federal interest rate on all net backpay earnings (gross backpay minus unemployment insurance benefits) through the end of calendar year 1993, payment for Mr. Poddey's travel expenses related to this case, and compensation

for one day of work missed to attend the hearing in this matter.

The Secretary filed an appeal of Judge Amchan's decision, and the issues on appeal included Judge Amchan's civil penalty assessment of \$100 for the violation, a significant reduction of the \$2,500 to \$3,000 penalty proposed by the Secretary, and his reduction of Mr. Poddey's backpay award by the amount of unemployment compensation he had received.

On August 5, 1996, the Commission issued its decision reversing Judge Amchan's deduction of unemployment compensation from Mr. Poddey's backpay award, and vacating his \$100 penalty assessment, 18 FMSHRC 1315, 1326 (August 1996). The matter was remanded for a penalty assessment with further findings on the respondent's history of prior violations. The case was reassigned to me for further adjudication.

The parties were afforded an opportunity to further resolve this matter in accordance with the Commission's remand, and in response to my remand order of October 29, 1996, the petitioner advised me by letter dated January 2, 1997, that the parties have reached a dispositive agreement of the case. The agreement is as follows:

The parties have agreed that \$1,000.00, is an appropriate penalty, given the determinations made by the Federal Mine Safety and Health Review Commission concerning negligence, gravity, and the operator's history of previous violations.

In addition, the parties agree that, pursuant to the Commission's ruling, the \$4,000.00, received by Perry Poddey as unemployment compensation should not be deducted from his back pay award, and that additional interest is due on the unpaid portion of the back pay award from the date of Judge Amchan's Decision and Order to the present.

Order

In view of the foregoing, IT IS ORDERED as follows:

1). The respondent shall pay a civil penalty assessment of \$1,000, for its violation of section 105(c) of the Act. Payment is to be made to MSHA

within thirty (30) days of the date of this decision and order.

2). In addition to the \$9,094.38, damage award that the respondent was ordered to pay by Judge Amchan in his January 25, 1994, Decision on Damages, 16 FMSHRC 176 (January 1994), the respondent shall pay to the complainant Perry Poddey, the sum of \$4,000, received in unemployment compensation benefits from the state of West Virginia, and previously deducted from his back pay award, with interest from the date of Judge Amchan's Decision and Order of November 29, 1993, to the present, 15 FMSHRC 2401, 2416 (November 1993). Interest should be computed in accordance with the short-term Federal rate applicable to the underpayment of taxes. Clinchfield Coal Co., 10 FMSHRC 1493 (November 1988).

Payment shall be made to the Complainant Perry Poddey within thirty (30) days of this Remand Decision and Order.

George A. Koutras
Administrative Law Judge

Distribution:

James Blair, Esq., Office of the Solicitor, U.S. Dept. of Labor,
4015 Wilson Blvd., Suite 516, Arlington, VA 22203
(Certified Mail)

Paul O. Clay, Jr., Esq., Laurel Creek Road, P.O. Box 746,
Fayetteville, WV 25840 (Certified Mail)

\mca