

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET, N.W., Room 6003
WASHINGTON, D. C. 20006-3868

May 21, 2001

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|---------------------------------------|---|----------------------------|
| ALEXIS M. HERMAN | : | DISCRIMINATION PROCEEDINGS |
| SECRETARY OF LABOR | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), <u>ex rel.</u> | : | Docket No. WEVA 99-152-D |
| JESSIE A. DANIEL et al., | : | HOPE-CD-99-05 |
| Complainants, | : | |
| v. | : | Mine: Douglas No. 1 Mine |
| HUBERT PAYNE, ERIC CHARLES, | : | Mine ID: 46-08462 |
| WYOMING POCAHONTAS LAND | : | |
| COMPANY, INC., PAUL STOVER, | : | Mine: War Eagle |
| P.E.S. ENTERPRISES AND SKIN | : | Mine ID: 46-08550 |
| POPLAR COAL CORP., | : | |
| Respondents | : | Docket No. WEVA 99-153-D |
| | : | HOPE-CD-99-06 |
| ALEXIS M. HERMAN | : | |
| SECRETARY OF LABOR | : | |
| UNITED STATES DEPARTMENT | : | Mine: Douglas No. 1 Mine |
| OF LABOR (MSHA) <u>ex rel.</u> | : | Mine ID: 46-08462 |
| BETTY MULLINS, | : | |
| Complainants, | : | |
| | : | Mine: War Eagle |
| HUBERT PAYNE, ERIC CHARLES, | : | Mine ID: 46-08550 |
| WYOMING POCAHONTAS LAND | : | |
| COMPANY, INC., PAUL STOVER, | : | |
| P.E.S. ENTERPRISES AND SKIN | : | |
| POPLAR COAL CORP. | : | |
| Respondents. | : | |

DECISION

Appearances: Emily Goldberg-Kraft, Esquire, Office of the Solicitor, U. S. Department of Labor, Arlington, Virginia, for Complainants;
James F. Bowman, Mine Safety & Health Administration, Mount Hope, West Virginia, for the Complainants;
James G. Jones, Mine Safety & Health Administration, Mount Hope, West Virginia, for the Complainants;
Mark E. Heath, Esquire, Charleston, West Virginia, for Respondents, Payne, Charles and Wyoming Pocahontas Land Company;
William D. Stover, Esquire, Beckley, West Virginia, for Respondents, Stover, P.E.S. Enterprises and Skin Poplar Coal Corporation.

Before: Judge Barbour

These consolidated discrimination cases arise under Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. §815 (c)(2)). In Docket No. WEVA 99-152-D, the Secretary alleges that Jessie Daniel and nine other named Complainants were unlawfully discriminated against by Hubert Payne, Eric Charles, Wyoming Pocahontas Land Company, Inc., Paul Stover, P.E.S. Enterprises and Skin Poplar Coal Corporation. The Complainants are coal haulage truck drivers who worked for B&J Trucking Company. The Secretary charges that on or about January 24 and January 25, 1999, they were illegally discharged by the Respondents because the Complainants refused to haul coal over allegedly hazardous roads and because they complained to the Secretary's Mine Safety and Health Administration (MSHA) about the roads' conditions. In addition to relief for the Complainants, the Secretary proposes the Respondents pay a civil penalty of \$4,500.00 for their violation of Section 105(c).

B&J Trucking Company is owned and operated by Betty Mullins. In Docket No. WEVA 99-153-D, the Secretary alleges that Mullins was illegally discriminated against on or about January 24 and January 25, 1999, when her company was replaced by other coal haulage companies because she supported her drivers' refusal to haul coal due to the allegedly hazardous roads and because she supported her drivers' right to file a complaint reporting the conditions. In addition to relief for Mullins, the Secretary proposes that the Respondents pay a civil penalty of \$4,500.00 for their violation of Section 105(c).

The Respondents denied all of the allegations, asserting in part that the Respondents quite their jobs and freely chose to work elsewhere.

The cases were called for hearing in Beckley, West Virginia. On the morning of the second day of the hearing, counsels engaged in extensive off-the-record discussions regarding a proposed settlement of the cases. In order to evaluate the settlement proposals and to consider new information regarding the financial condition of one of the main Respondents, Wyoming Pocahontas Land Company, the parties requested the hearing be adjourned. The request was granted (Tr. I at 363-365).

For the next several months counsels exchanged information and further consulted with one another and their clients. Indeed, negotiations continued almost until the day the hearing resumed. Shortly before it reconvened, the parties agreed to settle all of the claims set forth in Docket No. WEVA 99-152-D, and counsel for the Secretary filed a motion to approve the settlement.

When the hearing reopened, I orally approved the motion. I stated that I would confirm the approval in writing when a decision was issued (Tr. II at 7). Counsel for the Secretary also announced that in the remaining case, Docket No. WEVA 99-153-D, Mullins had reached a settlement with Paul Stover, P.E.S. Enterprises and Skin Poplar Coal Corp. In view of the settlement, counsel requested the three Respondents be excused from further participation in the hearing. I stated that I understood counsel subsequently would file a motion to approve the partial settlement and as requested I excused the Respondents and their counsel from the resumed hearing (Tr. II at 4-5).

Counsel for the Secretary then began to present evidence regarding Mullins' complaint against the remaining Respondents. After one a full day of testimony, I received a telephone call from counsel for the remaining Respondents advising me that he had reached a settlement with Mullins and the Secretary. When the hearing was called to order the following morning, counsel for the remaining Respondents reiterated that the matter had been fully and finally settled. Counsel stated the terms of the settlement. I inquired of counsel for the Secretary whether she and her client agreed with the terms. She answered that they did (Tr. II 142-143). I orally approved the settlement and stated that I would formally approve the settlement once a settlement motion was received (Tr. II 143).

**THE SETTLEMENTS, THEIR APPROVAL AND
THE ORDERS TO PAY**

DOCKET NO. WEVA 99-152-D

On June 16, 2000, the Wyoming Pocahontas Land Company filed for Chapter 11, bankruptcy protection in the U.S. Bankruptcy Court for the Eastern District of Kentucky. In view of the bankruptcy, the parties agree that the Respondents will pay a total settlement amount of \$15,000.00 to the Complainants to be paid in 10 equal amounts of \$1,500.00 to each Complainant.

Counsel for the Secretary states on behalf of the Complainants that the settlement amount will effectuate the intent and purposes of the Act. In addition, the parties agree to bear their own expenses (Sec. Motion 2-3). The settlement motion also states that nothing in the settlement shall be construed as an admission of a violation of the Act by any of the Respondents (Mot. 3).

I conclude that the settlement amount is reasonable and that it comports with the Act. Accordingly, the settlement is **APPROVED**. The Respondents are **ORDERED** to pay each of the Complainants \$1,500.00, a total of \$15,000.00, and upon payment of the total amount, the proceeding is **DISMISSED**.

DOCKET NO. WEVA 99-153-D

On June 16, 2000 the Wyoming Pocahontas Land Company filed for Chapter 11, bankruptcy protection in the U.S. Bankruptcy Court for the Eastern District of Kentucky. In view of the bankruptcy the parties have agreed to pay a total of \$10,000 to Betty Mullins within one month of the agreement to settle. Of the total, \$5,000.00 is to be paid by Paul Stover, P.E.S

Enterprises and Skin Poplar Coal Corp. and \$5,000.00 is to be paid by Hubert Payne, Eric Charles, and Wyoming Pocahontas Land Company, Inc.

Counsel for the Secretary states on behalf of the Complainant that the settlement amount will effectuate the intent and purposes of the Act. In addition, the parties agree to bear their own expenses (Mot. 2-3). The settlement motion also states that nothing in the settlement shall be construed as a violation of the Act by any of the Respondents (Mot. 3).

I conclude that the settlement amount is reasonable and that it comports with the Act. Accordingly, the settlement is **APPROVED**. If they have not already done so, the Respondents are **ORDERED** to pay Betty Mullins a total of \$10,000.00. Of the total, \$5,000.00 is to be paid by Paul Stover, P.E.S Enterprises and Skin Poplar Coal Corp. and \$5,000.00 is to be paid by Hubert Payne, Eric Charles, and Wyoming Pocahontas Land Company, Inc. Upon payment of the total amount this proceeding is **DISMISSED**.¹

David F. Barbour
Chief Administrative Law Judge

Distribution:

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William D. Stover, Esquire, United National Bank Building, 129 Main Street, Beckley, WV 25802-1732

¹ Counsels orally advised me that the Bankruptcy Court has approved the financial obligations undertaken by Wyoming Pocohontas Land Company.