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MSHA V. KENTUCKY CARBON  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
January 6, 1982  
SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),

On Behalf of  
BOBBY GOOSLIN

Docket No. KENT 80-145-D

v.

KENTUCKY CARBON  
CORPORATION

#### DECISION

This case arises under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (Supp III 1979), and involves the single issue of a miner's entitlement to monetary relief for a discriminatory discharge by an operator. 1/ The administrative law judge concluded that Kentucky Carbon Corporation had discharged the complainant, Bobby Gooslin, in violation of the 1977 Mine Act. He ordered the company to rehire and reinstate Gooslin to his former position with full seniority rights. 2/ The judge denied Gooslin's

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1/ Section 105(c)(2) provides in pertinent part:

The Commission shall have authority ... to require a person committing a violation of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay and interest.

2/ We previously considered another aspect of Gooslin's complaint. After Gooslin filed his initial claim of unlawful discrimination, the Secretary, pursuant to section 105(c)(2), applied to temporarily reinstate Gooslin pending a final determination on the merits of Gooslin's complaint. The application for temporary reinstatement was granted. Kentucky Carbon sought review of the reinstatement order, claiming that the procedural rule which governed the temporary reinstatement proceeding denied it due process. We granted Kentucky Carbon's petition for review of the reinstatement order but

specifically stated that proceedings on the discrimination complaint were not suspended. Two weeks later the judge issued his decision on the merits finding that Kentucky Carbon discriminatorily discharged Gooslin. Kentucky Carbon did not seek review of this finding and it became final by operation of law. Subsequently, in the proceeding reviewing the temporary reinstatement order, we found that our temporary reinstatement rule did not afford due process. Accordingly, we vacated the order. We noted, however that in view of the judge's decision on the merits and the company's failure to seek review thereof, a remand was unnecessary. *Kentucky Carbon Corp.*, 3 FMSHRC 1707, 1712 (1981).

~2

claim for back pay, interest, or other monetary benefits. He found that Gooslin had failed to present any evidence to support his claim for such relief and, therefore, that Gooslin had "abandoned" the claim. *Kentucky Carbon Corp.*, 3 FMSHRC 640, 662-663 (ALJ 1981). We granted the petition for discretionary review of the United Mine Workers of America. 3/ The petition raised only the issue of whether the judge properly denied monetary relief. Kentucky Carbon did not file a brief on review in opposition to the claim for monetary relief. For the reasons that follow, we hold that the judge erred in finding that Gooslin abandoned his claim.

The Mine Act's discrimination provision was intended to provide protection to miners similar to that in existing federal labor statutes. 4/ See *Glenn Munsey v. Smitty Baker Coal Co., Inc.*, 2 FMSHRC 3463, 3465 (1980), (construing analogous provision in Federal Coal Mine Health and Safety Act of 1969). The purpose of awarding monetary relief is two-fold: to further the purposes of the Act by deterring retaliatory actions, and to put an employee into the financial position he would have been in but for the discrimination. *NLRB v. Mastro Plastics Corp.*, 354 F.2d 170, 175 (2d Cir. 1965), cert. den., 384 U.S. 972 (1966). A finding of discriminatory discharge "is presumptive proof that some back pay is owed by the employer." *Mastro Plastics*, 354 F.2d at 178. "Unless compelling reasons point to the contrary, the full measure of relief should be granted to [an improperly] discharged employee." *Goldberg v. Bama Mfg. Corp.*, 302 F.2d 152, 156 (5th Cir. 1962).

The central purpose of the Mine Act is to promote safety and health among the nation's miners. To accomplish that goal it is essential that miners be encouraged to report unsafe conditions free from the threat of retaliation and subsequent economic loss. Thus, we are persuaded that upon a finding of discrimination, a presumption of the right to monetary relief arises and such relief should be denied only where "compelling reasons" otherwise dictate. Moreover, if monetary relief is denied, the bases for the failure to make the aggrieved

party whole must be articulated.

3/ Although the union was not originally a party to the proceeding, it entered an appearance prior to the hearing on the merits and subsequently represented Gooslin.

4/ E.g., section 10(c) of the National Labor Relations Act (as amended), 29 U.S.C. § 160(c)(1976) (NLRA), and sections 15(a)(3) and 16(c) of the Fair Labor Standards Act, 29 U.S.C. §§ 215(a)(3), 216(c)(1976) (FLSA).

~3

In this case, the presumption in favor of monetary relief was not rebutted, nor did the judge articulate compelling reasons for his denial of such relief. The judge stated that Gooslin failed to present evidence in support of the requested monetary relief. Gooslin established that he was discharged because of unlawful discrimination, alleged that the discharge resulted in monetary loss, and requested various types of monetary relief. In the circumstances of this case, we conclude that the judge erred in failing to determine what monetary relief, if any, is appropriate to make Gooslin whole.

Accordingly, we reverse that part of the judge's decision in which he found that Gooslin had abandoned his claim for monetary relief and remand for further proceedings.

~4

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