

CCASE:
MSHA V. EASTERN ASSOC. COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, DC
June 18, 1985

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION, on behalf of
ROBERT A. RIBEL

v. Docket No. WEVA 84-33-D

EASTERN ASSOCIATED COAL CORP.

BEFORE: Backley, Acting Chairman; Lastowka and Nelson,
Commissioners

ORDER

BY THE COMMISSION:

This discrimination proceeding was initiated by the Secretary of Labor, on behalf of miner Robert A. Ribel, against Eastern Associated Coal Corporation ("Eastern") under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 ("the Mine Act"). 30 U.S.C. 815(c)(2) (1982). Following a hearing, a Commission administrative law judge held that Ribel had been unlawfully discharged by Eastern in violation of section 105(c)(1) of the Mine Act, 30 U.S.C. 815(c)(1), and ordered that Ribel be reinstated, with back pay. 6 FMSHRC 2203 (September 1984) (ALJ). In a subsequently issued order, the judge also awarded Ribel certain costs and expenses, but denied Ribel's request for an award of attorneys' fees for private counsel retained by Ribel in this section 105(c)(2) proceeding. 6 FMSHRC 2744 (December 1984)(ALJ). Thereafter, we granted cross petitions for discretionary review filed by Eastern and Ribel. Eastern sought review of the judge's decision on the merits, while Ribel primarily sought review of the judge's

denial of attorneys' fees.

On review, the parties have filed extensive briefs and the Commission has heard oral argument. One of the issues addressed both in the briefs and at oral argument is the apparent lack of findings of fact in support of the judge's conclusion that the Secretary established a prima facie case. Although the judge does reach such a conclusion, he immediately turns to the examination of the validity of Eastern's affirmative defense, leaving us without the necessary findings as to the elements of the prima facie case. While some of such findings may well be set forth in the entire opinion, which encompasses three dockets, the requisite findings are not set forth in the discussion of the case before us.

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Accordingly, the merits portion of this case is remanded to the judge for the limited purpose of making specific findings of fact, along with any credibility determinations necessary to resolve key, conflicting testimony, and for an analysis of those findings consistent with established Commission precedent. 30 U.S.C.

823(d)(2)(C). On remand, the judge is directed to analyze in detail whether a prima facie case of discrimination was established. In particular, the judge is to determine what actually occurred at the August 5, 1983 meeting between longwall coordinator Michael Toth and the miners of the midnight shift, and that meeting's relationship, if any, to the allegation that the decision to suspend Ribel with intent to discharge was a violation of section 105(c).

Finally, in view of the expedited status of this case, the judge is directed to supplement his decision on the merits within 30 days from the issuance of this order. In the meantime, the Commission will retain jurisdiction over this matter.

Richard V. Backley, Acting Chairman

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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