

CCASE:
RONALD TOLBERT V. CHANEY CREEK COAL
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FMSHRC-WDC
NOVEMBER 10, 1987

RONALD TOLBERT

v. Docket No. KENT 86-123-D

CHANEY CREEK COAL CORPORATION

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,
Commissioners

ORDER

BY THE COMMISSION:

In this discrimination case that arose under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), counsel for complainant Ronald Tolbert has filed a motion requesting the Commission to reopen the proceeding for purposes related to enforcement of the Commission's final decision. Respondent Chaney Creek Coal Corporation ("Chaney Creek") has opposed the motion. For the following reasons, the motion is denied.

This case was commenced by a discrimination complaint filed with the Commission by Mr. Tolbert pursuant to section 105(c)(3) of the Mine Act, 30 U.S.C. § 815(c)(3). On March 16, 1987, Commission Administrative Law Judge Gary Melick issued a decision concluding that Chaney Creek had discriminated against Tolbert in violation of section 105(c)(1) of the Act, 30 U.S.C. § 815(c)(1), by refusing to rehire him from layoff status because he had testified on behalf of Odell Maggard in the latter's discrimination case before the Commission (Docket Nos. KENT 86-1-D, etc.). 9 FMSHRC 580 (March 1987) (ALJ). The judge also ordered Chaney Creek to offer Tolbert employment. On May 12, 1987, the judge issued a remedial order directing Chaney Creek to pay Tolbert \$14,453 in back pay and interest through April 8, 1987, as well as any additional back pay and interest to date of reinstatement, and \$16,900 in attorney's fees. 9 FMSHRC

929 (May 1987)(ALJ). The judge referred the case to the Secretary of Labor for the proposal of a civil penalty.

On June 8, 1987, Chaney Creek petitioned the Commission for review of the judge's decision. The Commission issued a notice on June 22, 1987, stating that review was not directed. Accordingly, pursuant to operation of the statute, the judge's decision became a final decision

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of the Commission on June 22, 1987, 40 days after its issuance. 30 U.S.C. § 823(d)(1). Chaney Creek did not seek review of the judge's decision in a United States Court of Appeals. 30 U.S.C. § 816(a).

Tolbert's motion to reopen alleges that Chaney Creek reinstated Tolbert on May 28, 1987, but to date has paid him only \$2,500 of the back pay and \$1,000 of the attorney's fees owed under the Commission's final decision. The motion further alleges that Chaney Creek has claimed financial inability to pay and, on September 16, 1987, proposed settling the Commission's judgment by paying Tolbert 35-50 cents on the dollar. Tolbert asserts that two other mining corporations and John Chaney individually are successors and/or alter egos of Chaney Creek, possess the financial ability to satisfy the judgment debt, and should be brought into this proceeding as successors under the Commission's successorship doctrines as enunciated in *Secretary on behalf of James Corbin et al. v. Sugartree Corp., et al.*, 9 FMSHRC 394 (March 1987), pet. for review filed, No. 87-3391 (6th Cir. April 29, 1987). Tolbert requests the Commission to remand this matter to the formerly presiding administrative law judge for further proceedings. The operator has filed an opposition.

The essential nature of the remedy sought by Tolbert is collection of a judgment debt. This relief involves, inter alia, enforcement and execution of the Commission's final decision in this matter. Such an enforcement request is properly directed to the Secretary of Labor. Under the Mine Act, the Secretary is empowered to seek compliance with Commission orders in the federal courts. See 30 U.S.C. §§ 816(b) & 818. We need not and do not express any opinion as to other avenues of relief that may be available to Tolbert.

Accordingly, Tolbert's motion to reopen is denied.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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