

CCASE:
HARLEY SMITH V. BOW VALLEY COAL RESOURCES
DDATE:
19871229
TTEXT:

FMSHRC-WDC
December 29, 1987

HARLEY M. SMITH

Docket Nos. KENT 86-23-D
KENT 86-84-D

v.

BOW VALLEY COAL RESOURCES, INC.

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

ORDER

BY THE COMMISSION:

In this discrimination case arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 et seq. (1982), a Joint Motion to Dismiss has been filed based on settlement. For the reasons set forth below, the motion is granted.

In decisions issued on April 14, 1987, and August 19, 1987, Commission Administrative Law Judge Avram Weisberger concluded that Bow Valley Coal Resources, Inc. ("Bow Valley"), had unlawfully discharged Complainant Harley M. Smith in violation of section 105(c)(1) of the Mine Act, 30 U.S.C. §815(c)(1), and ordered Bow Valley to reinstate Mr. Smith and to pay him approximately \$52,880 in back pay plus interest, \$2,500 in attorney's fees, and miscellaneous costs. 9 FMSHRC 735 (April 1987) (ALJ); 9 FMSHRC 1468 (August 1987) (ALJ). Bow Valley filed a petition for discretionary review, which the Commission granted on September 25, 1987.

On October 28, 1987, we issued an order granting the complainant's motion to stay proceedings on review pending submission of a dismissal motion based on the parties' settlement of the case. On November 16, 1987, the Commission received a brief Joint Motion to Dismiss, stating that the parties "have reached an agreement which disposes of all issues raised herein." The motion was signed on behalf of Great Western Coal Inc. ("Great Western"), which was

described as the "successor" to Bow Valley. The Commission administratively directed the parties to supplement the record by submitting the actual settlement agreement. Cf. Secretary of Labor on behalf of John Koerner v. Arch Mineral Coal Co., 1 FMSHRC 471 (June 1979). The Commission has now received that

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agreement, which is signed by Smith, and certain additional information concerning the agreement.

Upon consideration of the record as supplemented, we approve the settlement and grant the dismissal motion. Accordingly, our direction for review is vacated and the proceeding is dismissed.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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