CCASE:
DANNY JOHNSON V. LAMAR MINING,
WILLIAMS, GRAHAM, WILLIAMS & MARTIN COAL
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FMSHRC-WDC
April 21, 1988

DANNY JOHNSON

v. Docket No. KENT 87-68-D

LAMAR MINING COMPANY
LARRY E. WILLIAMS, L. GRAHAM
MARTIN, and WILLIAMS & MARTIN
COAL COMPANY

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

ORDER

BY: THE COMMISSION:

This discrimination proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. $ 801 et seq. (1982)("Mine Act" or "Act"), was dismissed following approval by Commission Chief Administrative Law Judge Paul Merlin of the parties' settlement agreement. 9 FMSHRC 367 (February 1987)(ALJ). Subsequently, counsel for complainant Danny Johnson filed with the Commission a motion to reopen and remand this proceeding, a motion to amend the order approving settlement, and a motion for an award of interest on the balance of the judgment owed. For the following reasons, we reopen this matter for the limited purpose of amending the order approving settlement. We confirm the enforceability of the settlement agreement and the order approving the agreement, but deny the motion for an award of interest.

Based on the pleadings filed herein, it appears that complainant Danny Johnson was employed by Lamar Mining Company ("Lamar") at one of its surface coal mine operations located in Knott County, Kentucky. Johnson was laid off by Lamar on June 27, 1987. Subsequently, he filed a complaint with the Department of

Labor s Mine Safety and Health Administration alleging that his layoff violated section 105(c)(1) of the Mine Act. 30 U.S.C. $ 815(c)(1). The Secretary of Labor did not file a discrimination complaint on Johnson's behalf, however, and Johnson thereupon filed his own discrimination complaint with this independent Commission pursuant to section 105(c)(3) of the Act. 30 U.S.C. $ 815(c)(3). In addition to Lamar, Johnson's complaint named as respondents Larry E. Williams and C. Graham Martin, individually, and Williams & Martin Coal Co., Inc., as a successor to Lamar. Johnson's complaint alleged that he had been unlawfully laid off because of his refusal to drive a truck with unsafe brakes.

Shortly after Johnson filed his complaint with the Commission, Johnson, Lamar and Larry E. Williams concluded a settlement agreement

dated February 11, 1987. The agreement provided that in exchange for withdrawal of Johnson's complaint and waiver of reinstatement and attorney's fees, respondents Lamar and Larry E. Williams would pay Johnson damages of $5,000, in four installments of $1,250 each, due between February 18, 1987, and May 18, 1987. The agreement was signed by Johnson and his attorney, by respondent Larry E. Williams, and by Bobby Williams, as attorney for Lamar. Johnson filed the settlement agreement with the Commission along with a motion to withdraw his discrimination complaint and to dismiss the proceeding.

In an Order Approving Settlement and Order of Dismissal issued on February 26, 1987, Judge Merlin approved the settlement as being "in accord with the purposes" of the Mine Act, granted the motion to withdraw and dismissed the case. 9 FMSHRC at 367. No party sought review of the judge's final order, and forty days after its issuance it became a final decision of the Commission by operation of the Mine Act.

30 U.S.C. $ 823(d)(1).

In December 1987, counsel for Johnson filed with the Commission a Motion to Reopen and to Remand to Chief Administrative Law Judge, a Motion to Amend the Court's Order Approving Settlement and Order of Dismissal, and a Motion for Interest on Balance of Money Owed pursuant to Settlement Agreement. In these motions, supported by counsel's affidavit, counsel alleges that respondents Lamar and Larry E. Williams have paid to Johnson only the first $1,250 installment of the total of $5,000 in agreed damages. Counsel asserts that he requested the Department of Labor to initiate legal action in enforcement of the judge's settlement approval order, pursuant to the enforcement powers vested in the Secretary by section 106(b) of the Act, 30 U.S.C. $ 816(b)(see generally Tolbert v. Chaney Creek Coal Corporation, 9 FMSHRC 1847 (November 1987)). Counsel further alleges that he was informed by a representative of the Department of Labor's Solicitor's Office that the Secretary would not take such enforcement action because the judge's order itself did not expressly direct respondents to comply with the settlement agreement. In relief, Johnson requests the Commission to reopen this closed proceeding and to remand it to the judge so that he may entertain the motions seeking amendment of his prior order by adding specific direction for compliance and the award of interest.

The Commission directed respondents to file a response to Johnson's motions and afforded the Secretary an opportunity to respond as well. The respondents' response does not deny Johnson's assertion

that the agreed damages have not been paid in full but states merely that Larry E. Williams and C. Graham Martin should not be joined in this action individually, because Johnson was employed by Lamar, a corporate entity. The response seeks dismissal of Williams and Martin as respondents. (Johnson filed a reply conceding that Martin had not signed the settlement agreement and was not liable to pay thereunder but contending that no proper legal basis existed at this juncture of the proceeding to dismiss the individual respondents as parties.) The Secretary's response does not address Johnson's allegations concerning her objection to the absence in the judge's order of express language directing compliance with the settlement agreement. Rather, the

Secretary states that her decision seeking or declining to pursue enforcement of a final Commission order is a matter committed to her prosecutorial discretion. The Secretary asserts:

> The complainant may enforce the settlement agreement in a state court contract action. Because the state court remedy is available to Mr. Johnson, the Secretary has determined not to file an enforcement action pursuant to section 106(b) of the Mine Act at this time.

S. Response 2 (January 22, 1988).

Essentially, Johnson's motions request the reopening of this proceeding on the grounds that the settlement agreement approved by Judge Merlin has been materially breached or effectively repudiated by respondents. In support of his efforts to enforce the approved settlement agreement, Johnson asks that the judge's order be amended to specifically direct compliance with the agreement. We first examine the jurisdictional issue posed by these motions.

Under our procedural rules incorporating, as appropriate, the Federal Rules of Civil Procedure, the Commission may entertain and act upon motions requesting the reopening of, or other relief from final Commission decisions. 29 C.F.R. $ 2700.1(b) (Federal Rules of Civil Procedures apply in absence of applicable Commission rule); Fed. R. Civ. P. 60 (Relief from Judgment or Order). See, e.g., M.M.Sundt Constr. Co., 8 FMSHRC 1269, 1270-71 (September 1986). Fed. R. Civ. P. 60(b)(6) states:

> On motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for the following reasons:
> ... (6) any other reason justifying relief from the operation of the judgment.

Ample judicial authority supports the general proposition that Rule 60(b)(6) authorizes a federal tribunal to reopen a proceeding that had previously been dismissed by it on the basis of the parties' settlement agreement. See, e.g., Fairfax Countywide Citizens Assn. v. Fairfax County, 571 F.2d 1299, 1302-03 (4th Cir.), cert. denied, 439 U.S. 1047 (1978), and authorities cited; Aro Corp. v. Allied Witan Co., 531 F.2d 1368, 1371-72 (6th Cir.), cert. denied, 429 U.S. 862 (1976). See also In re Corrugated Containers Antitrust Litigation, 752 F.2d 137, 141-42 (5th Cir. 1985). Based on the rationale in these

decisions, we hold that in appropriate circumstances the Commission may, in its discretion, reopen one of its proceedings pursuant to Fed. R. Civ. P. 60(b)(6) upon a proper showing that an underlying settlement agreement approved by the Commission has been materially breached or repudiated. Upon consideration of the motion and responses before us, it is not disputed that respondents abrogated the settlement agreement shortly after the Commission approved the agreement and dismissed the proceeding. Accordingly, in the circumstances presented by the present record, we grant Johnson's motion to reopen this matter so that we may turn to

consideration of his other motions.

We need not discuss extensively the suggestion that the judge's order is deficient because it does not contain express language directing the parties to comply with the settlement agreement. Upon the unopposed motion of complainant, the settlement was approved by the judge. Plainly, the agreement is not intended to be self-defeating, and the judge's order approving the settlement was not issued as a nullity. The judge's order approving the settlement and dismissing the proceeding obviously and inherently directs compliance with the settlement agreement. We therefore hold that both the agreement and the judge's order approving the settlement are valid, binding and enforceable. To place this result beyond dispute, we hereby amend the judge's order by adding the following sentence at the end of the second paragraph of the judge's order: "The parties to the settlement are directed to comply with the terms of the settlement within the period specified therein."

Because we have granted the relief sought in the motion to amend, it is unnecessary to remand this matter to the judge. Johnson is free to pursue all appropriate remedies that he may have for enforcement of the judge's order.

Concerning Johnson's request for an award of interest on the balance of the judgment, we note that the settlement agreement provided only for a total payment of $5,000 and that no provision was made for interest on this amount during the period of installment payments. A damage award in the form of interest on the unpaid principal is a proper remedy in an enforcement action by Johnson, but consideration by the Commission of an award of interest at this juncture would be inappropriate. Accordingly, we deny Johnson's motion for interest. Similarly, given our disposition, we need not address the Secretary's prosecutorial discretion with respect to Johnson's request that the Secretary enforce the order approving settlement. Finally, no proper basis has been advanced by respondents for the dismissal of any of the individual party-respondents from this proceeding and respondents' motion to that effect is denied.

In summary, we reopen this matter, amend the judge's order and confirm the enforceability of the parties' settlement agreement and the judge's order as a final Commission order. Johnson's motions for remand and interest are denied, and respondents' motion to dismiss the individual respondents is also 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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