

CCASE:
BOBBY KEENE (MSHA) V. S&M, MULLINS & PRESTIGE COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.

February 9, 1990

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)
on behalf of BOBBY G. KEENE

v. Docket No. VA 86-34-D

S&M COAL COMPANY, INC.
TOLBERT P. MULLINS, and
PRESTIGE COAL COMPANY, INC.

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

ORDER

BY THE COMMISSION:

This discrimination case arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982) ("Mine Act" or "Act"), is before us on remand from an opinion of the United States Court of Appeals for the District of Columbia Circuit, affirming in part and reversing in part our prior decision in this matter. Secretary of Labor on behalf of Bobby G. Keene v. Tolbert P. Mullins, etc., 888 F.2d 1448 (1989), aff'g in part & rev'g in part, 10 FMSHRC 1145 (September 1988). At issue before the Court were the liability of Prestige Coal Co., Inc. ("Prestige") as a successor-in-interest to S&M Coal Co., Inc. ("S&M") for S&M's discriminatory discharge of Keene and the individual liability of Tolbert P. Mullins for offering to reemploy Keene under allegedly illegal and unsafe conditions.

The Court affirmed the Commission's conclusion that Prestige was not a successor-in-interest to S&M (888 F.2d at 1453-54), but held that the

Commission erred in ruling that Mullins offer of rehire was not a separate act of unlawful discrimination for which Mullins was personally liable (888 F.2d at 1450-53). The Court's action leaves standing the Commission's vacation of that portion of the judge's remedial order regarding Prestige and reverses the Commission's vacation of that portion of the order regarding Mullins.

Accordingly, the judge's conclusion that Mullins as an individual discriminated against Keene in violation of the Act in his refusal to reemploy Keene is reinstated. That portion of the judge's order requiring Mullins jointly and severally with S&M to pay Keene costs and back pay and to pay a civil penalty is reinstated. S&M and Mullins are ordered to pay Keene the costs, back pay and interest awarded by the judge and to pay the civil penalty assessed by the judge. Interest is to be calculated according to the formula set forth by the Commission in Secretary on behalf of Bailey v. Arkansas-Carbona, 5 FMSHRC 2642 (December 1983), and, as applicable, Loc. U. 2274, UMWA v. Clinchfield Coal Co., 10 FMSHRC 1493 (November 1988), pet. for review filed, No. 88-1873 (D.C. Cir. December 16, 1988)(see also 54 Fed. Reg. 2226 (January 19, 1989)).

Distribution

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