

CCASE:
SOL (MSHA) V. MUTUAL MINING, INC.
DDATE:
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TTEXT:

September 13, 1993

SECRETARY OF LABOR, MINE SAFETY :
AND HEALTH ADMINISTRATION (MSHA), :
on behalf of CLETIS R. WAMSLEY :
and ROBERT A. LEWIS, APPLICANT :
: TEMPORARY REINSTATEMENT
: PROCEEDING
v. :
: DOCKET NO. WEVA 93-375-D
: :
: DOCKET NO. WEVA 93-376-D
MUTUAL MINING, INC., RESPONDENT :

BEFORE: Holen, Chairman; Backley, Doyle, and Nelson, Commissioners

DECISION

BY THE COMMISSION:

In this discrimination proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)("Mine Act"), respondent Mutual Mining, Inc., has filed a petition for review of Administrative Law Judge Arthur Amchan's August 16, 1993, Order of Temporary Reinstatement issued pursuant to Commission Procedural Rule 45, 58 F.R. 12158 (March 3,1993), to be codified at 29 C.F.R. 2700.45 (1993). We grant respondent's petition for review and, for the reasons that follow, affirm the judge's order requiring the temporary reinstatement of Cletis Wamsley and Robert Lewis.

Complainants Wamsley and Lewis were miners employed by Mutual Mining, Inc. and active union safety committeemen until their layoff on December 21, 1992. On December 22, they filed discrimination complaints with the Secretary of Labor's Mine Safety and Health Administration ("MSHA"). Following an investigation, the Secretary determined that the discrimination complaints filed by Wamsley and Lewis were not frivolous. On July 6, 1993, the Secretary filed an application for temporary reinstatement of the two miners. On August 5, an evidentiary hearing on the application was held. On August 16, the judge issued his decision in which he concluded that the complaints were not frivolous.

The Secretary alleges that Wamsley and Lewis were laid off because of their activities as union safety committeemen, including their participation in filing a complaint, pursuant to section 103(g) of the Mine Act, 30 U.S.C. 803(g), and their involvement in a "safety run." Subsequently, MSHA responded to the section 103(g) complaint and issued 20 citations and orders. On the day of the MSHA inspection, respondent laid off Wamsley and Lewis, along with ten other miners. Respondent contends that the miners were laid off for economic reasons and that the layoff had been planned long before the safety complaints and the MSHA inspection.

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As the Commission has previously stated, "The scope of a temporary reinstatement hearing is narrow, being limited to a determination by the judge as to whether a miner's discrimination complaint is frivolously brought." Secretary of Labor o.b.o. Price and Vacha v. Jim Walter Resources, Inc., 9 FMSHRC 1305, 1306 (August 1987), aff'd, Jim Walter Resources, Inc. v. FMSHRC, 920 F.2d 738 (11th Cir. 1990).

The judge held an evidentiary hearing and considered the testimony of five witnesses in addition to the two complainants. He determined:

The Secretary of Labor has the burden of proving that the complaints were not frivolous....
I ... find that the record as a whole establishes that the complaints were not frivolous.

Slip op. at 1-2.

The only issue before us is whether Wamsley's and Lewis' discrimination complaints were frivolously brought. After careful review of the evidence and pleadings, we conclude that the judge's determination that the complaints are not frivolous is supported by the record and is consistent with applicable law. We intimate no view as to the ultimate merits of this case.

Respondent has also moved the Commission to stay the order of the judge. In support of its motion, respondent asserts that reinstatement of the complainants would contravene its collective bargaining agreement and that the complainants are currently employed. To the extent that respondent sought relief pending our consideration of the instant matter, such relief was considered and denied. To the extent that respondent seeks a stay of the temporary reinstatement order pending a final determination of whether a violation of section 105 (c)(1) of the Mine Act has occurred, its motion is denied.

Accordingly, the judge's order requiring the temporary reinstatement of Cletis Wamsley and Robert Lewis is affirmed.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner