

CCASE:  
SOL (MSHA) V. THUNDER BASIN COAL  
DDATE:  
19931206  
TTEXT:

December 6, 1993

TEMPORARY REINSTATEMENT  
PROCEEDING

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
on behalf of LOY PETERS,	:	
DONALD GREGORY, and	:	Docket No. WEST 93-652-D
DARRYL ANDERSON,	:	
Complainants	:	
	:	
v.	:	
	:	
THUNDER BASIN COAL COMPANY,	:	
Respondent	:	

DECISION

In this discrimination proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)("the Mine Act"), Thunder Basin Coal Company ("respondent") has filed a petition for discretionary review of Administrative Law Judge Arthur J. Amchan's November 2, 1993, order of temporary reinstatement, issued pursuant to Commission Procedural Rule 45, 58 Fed. Reg. 12158 (March 3, 1993), to be codified at 29 C.F.R. 2700.45 (1993). We grant respondent's petition for discretionary review and, for the reasons that follow, affirm the judge's order requiring the temporary reinstatement of Loy Peters, Donald Gregory, and Darryl Anderson ("complainants").

Complainants were employed at respondent's Black Thunder mine as technicians-welders when they were laid off on July 8, 1993. On August 31, 1993, complainants jointly filed a discrimination complaint with the Secretary of Labor ("Secretary") pursuant to Section 105(c)(2) of the Mine Act, alleging illegal discharge. Following an investigation, the Secretary determined that the discrimination complaint filed by the miners was not frivolous and on September 24, 1993, filed an application for temporary reinstatement. The Secretary alleged that each of the complainants was illegally discharged in retaliation for exercising specified statutory rights protected under the Mine Act. Respondent contended that the termination of the three complainants occurred as a result of a legitimate business decision to reduce its work force at the Black Thunder Mine by 34 miners. On October 20 and 21, 1993, an evidentiary hearing on the application was held. On November 2, 1993, the judge issued his decision, concluding that the complaint of illegal discharge filed by the three miners was not frivolous.

After conducting an extensive evidentiary hearing consisting of testimony from seven witnesses and the admission into evidence of 50 exhibits, the judge evaluated the evidence as to each individual complainant and concluded, "[T]he Secretary has met his burden in establishing that the discrimination complaints of Loy Peters, Darryl Anderson, and Donald Gregory alleging retaliatory discharge on July 8, 1993 are 'not frivolous.'" Slip op. at 12

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). That is the only issue before us. We have carefully reviewed the record, the petition for discretionary review, and the Secretary's response thereto, and conclude that the judge's determination that the complaint of the three miners is not frivolous is supported by substantial evidence and is consistent with applicable law.

Respondent has additionally applied for a stay of the order of temporary reinstatement. Upon review of the application, and the Secretary's response in opposition thereto, we deny the application for a stay. We note, however, that respondent's alternative request that the complainants be economically reinstated has been accepted by the individual complainants. Secretary's Response in Opposition to Petition for Discretionary Review and Application to Stay Order at 25 n.15.

Accordingly, the judge's order requiring the temporary reinstatement of Loy Peters, Donald Gregory, and Darryl Anderson is affirmed.

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Arlene Holen, Chairman

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Richard V. Backley, Commissioner

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Joyce A. Doyle, Commissioner

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L. Clair Nelson, Commissioner