

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, DC 20004-1710

MAR 30 2016

SCOTT D. MCGLOTHLIN

v.

DOMINION COAL CORPORATION

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Docket No. VA 2014-233-D

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, Commissioners

DECISION

BY THE COMMISSION:

In this discrimination proceeding arising under section 105(c)(3) of the Mine Act, 30 U.S.C. § 815(c)(3), a Commission Administrative Law Judge issued a decision granting summary decision in favor of the Complainant, Scott D. McGlothlin, and affirming his discrimination complaint. 37 FMSHRC 1256, 1265 (June 2015) (ALJ). In September 2015, the parties filed a Joint Motion to File under Seal and to Dismiss, which included a proposed settlement agreement regarding relief for McGlothlin. On October 21, 2015, the Judge issued an order denying the motion. 37 FMSHRC 2511, 2514 (Oct. 2015) (ALJ).

On November 11, 2015, in response to the Judge’s denial, the parties filed a Joint Motion to Approve Settlement, to File under Seal and to Dismiss, which included a revised settlement agreement proposal. Thereafter, following the issuance and filing of various orders and pleadings, the Judge issued a Decision on Relief and Final Order. 38 FMSHRC ___ (Feb. 8, 2016). In that decision, the Judge awarded McGlothlin back pay, consistent with the terms of the revised settlement agreement, and ordered other relief. *Id.* at ___, slip op. at 8.

However, the Judge rejected the attorneys’ fees portion of the revised settlement agreement and awarded attorneys’ fees to the Complainant’s attorneys in an amount approximately 35 percent less than the amount agreed to by the parties. *Id.* at ___, slip op. at 4-5, 15. The Commission subsequently granted McGlothlin’s petition for discretionary review, challenging the Judge’s rejection of those provisions.

Oversight of proposed settlements is committed to the Commission’s sound discretion. *Sec’y of Labor on behalf of Hopkins v. Asarco, Inc.*, 18 FMSHRC 2081, 2082 (Dec. 1996) (citations omitted). The Commission has exercised this discretion in the past in section 105(c)(3) discrimination proceedings. *See, e.g., Reid v. Kiah Creek Mining Co.*, 15 FMSHRC 390 (Mar. 1993). The Commission has explained that the grant of authority set forth in section 105(c) to provide appropriate relief necessarily includes the authority to review settlement agreements in

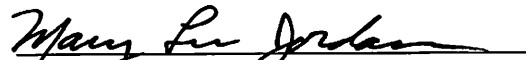
discrimination cases. *Sec'y of Labor on behalf of Maxey v. Leeco, Inc.*, 20 FMSHRC 707 (July 1998).¹

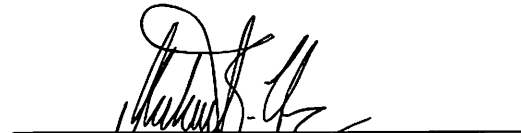
In the matter before us, our review is limited to the Judge's rejection of the proposed settlement terms, agreed to by the parties, regarding attorneys' fees. In his February decision, the Judge determined that the revised settlement proposal provided appropriate relief to the discriminatee, Mr. McGlothlin. Furthermore, this proceeding does not involve the review of a proposed settlement of a civil penalty.

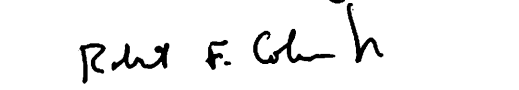
Where, as here, the parties have agreed to a stipulated amount of attorneys' fees and there are no allegations or evidence that such an amount would adversely affect the remedy afforded the discriminatee, the Judge erred in rejecting the settlement based upon the agreed upon amount of attorneys' fees.

¹ Commissioner Cohen notes that in *Secretary of Labor on behalf of Maxey v. Leeco, Inc.*, 20 FMSHRC 707, 708 (July 1998), in response to a partial dissent by Commissioner Beatty which questioned the Commission's authority to review settlement agreements in discrimination cases, the Commission made clear that the purpose of its authority to review settlement agreements under section 105(c) of the Mine Act was "to ensure that discriminatees are made whole." The Commission stated, ". . . for if no such authority existed, the ability of the Commission and its judges to ensure that discriminatees are made whole would be severely curtailed, a result at odds with the intent of the Mine Act." (citing S. Rep. No. 95-181, at 13 (1977), *reprinted in* Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 625 (1978)). *Id.*


Accordingly, we vacate those portions of the Judge's decision rejecting the revised settlement agreement as to attorneys' fees, and we approve the settlement agreement as to those provisions.²


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen Jr., Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

² We are approving the provisions in the revised settlement agreement filed on November 11, 2015, relating to attorneys' fees. Because of our disposition, we do not reach any other matters discussed in McGlothlin's petition for discretionary review, including the recovery of attorneys' fees incurred after submission of the revised settlement agreement.

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