

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

JAN 26 2017

GENE ESTELLA

v.

NEWMONT USA LIMITED

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Docket No. WEST 2016-31-DM

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


ORDER

BY THE COMMISSION:

This discrimination proceeding arises under section 105(c)(3) of the Federal Mine Safety and Health Act of 1977 (“Mine Act”), 30 U.S.C. § 815(c)(3) (2012). On December 22, 2016, Administrative Law Judge William B. Moran issued a decision finding that Newmont USA Limited (“Newmont”) discriminated against miner Gene Estella in violation of section 105(c) of the Mine Act. The Judge further ordered the parties to submit an agreed settlement or the parties’ positions regarding remedies for Estella within 30 days of his decision. On January 23, 2017, Newmont filed a Protective Petition for Discretionary Review of the Judge’s decision.

Section 113(d) of the Mine Act allows for review of an administrative law judge’s final decision in a proceeding under the Mine Act. 30 U.S.C. § 823(d)(2). The Commission has held that a Judge’s decision finding a violation of section 105(c) is not final until the Judge has awarded all relief due to the complainant. *See Sec’y of Labor obo Shemwell v. Armstrong Coal Co.*, 35 FMSHRC 2056, 2057 (July 2013). In his decision in this case, Judge Moran explicitly retained jurisdiction of this matter to determine the monetary remedy for Estella. Accordingly, we determine that the Judge’s decision has not become final and appealable.


For the reasons set forth above, Newmont's Protective Petition for Discretionary Review is denied.



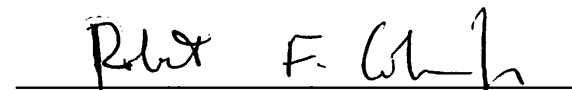
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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