

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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July 14, 2011

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), :
on behalf of PETER L. DUNNE :
 :
 :
v. : Docket No. LAKE 2011-327-DM
 :
 :
VULCAN CONSTRUCTION :
MATERIALS, LP :

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

DECISION

BY: Jordan, Chairman, and Nakamura, Commissioner

This temporary reinstatement proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006) (“Mine Act” or “Act”). Pursuant to section 105(c)(2) of the Mine Act, 30 U.S.C. § 815(c)(2), and a settlement agreement among the parties, Administrative Law Judge Janet Harner ordered miner Peter L. Dunne temporarily reinstated, on an economic basis, at Vulcan Construction Materials, LP (“Vulcan Materials”) after he had been discharged by the operator. Unpublished Order, dated Jan. 28, 2011 (ALJ). The Department of Labor’s Mine Safety and Health Administration (“MSHA”), by letter dated February 15, 2011, notified Dunne that it had concluded he had not been discriminated against. Consistent with the instructions included in MSHA’s letter, on March 16, 2011, Dunne filed his own discrimination complaint pursuant to section 105(c)(3), 30 U.S.C. § 815(c)(3). It is presently pending before Commission Administrative Law Judge L. Zane Gill in *Dunne v. Vulcan Construction Materials, LP*, Docket No. LAKE 2011-457-DM.

On April 28, 2011, Vulcan Materials moved in Docket No. LAKE 2011-457-DM to dissolve the order of temporary reinstatement. The Secretary of Labor filed a response in opposition, and on June 7, 2011, Judge Gill issued an order denying the motion to dissolve. On July 7, 2011, Vulcan Materials filed a Petition for Discretionary Review, which the Commission has granted.

Consistent with our opinion in *Secretary of Labor on behalf of Gray v. North Fork Coal Corp.*, 33 FMSHRC 27, 33-44 (Jan. 2011), we affirm the judge's order denying Vulcan Materials' motion to dissolve the temporary reinstatement order.

Mary Lu Jordan, Chairman

Patrick K. Nakamura, Commissioner

Commissioner Cohen, concurring:

Consistent with my opinion in *Secretary of Labor on behalf of Gray v. North Fork Coal Corp.*, 33 FMSHRC 27, 45-52 (Jan. 2011), I agree that the judge's order denying the motion to dissolve the temporary reinstatement order should be affirmed.

Robert F. Cohen, Jr., Commissioner

Commissioners Duffy and Young, dissenting:

Consistent with our opinion in *Secretary of Labor on behalf of Gray v. North Fork Coal Corp.*, 33 FMSHRC 27, 53-58 (Jan. 2011), we disagree that the judge's order denying the motion to dissolve the temporary reinstatement order should be affirmed, and instead would reverse the judge's order denying the motion and dissolve the temporary reinstatement order.

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

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