



Manning awarded Hopkins reinstatement<sup>2</sup> and \$12,752 in back pay (minus payroll deductions), interest, and expenses. 18 FMSHRC 1160, 1163-65 (July 1996) (ALJ). Judge Manning also ordered ASARCO to expunge from Hopkins' personnel records any mention of his discharge, and to pay a civil penalty of \$800 for its violation of section 105(c). *Id.* at 1165. On August 23, 1996, the Commission granted ASARCO's petition for discretionary review challenging the judge's conclusions.<sup>3</sup>

On October 23, 1996, the parties filed a Joint Motion To Approve Settlement Agreement which proposed that ASARCO pay Hopkins \$15,000 in settlement of Hopkins' claims against the company and in consideration of his foregoing any rights to be reinstated or to seek employment at any facility owned by ASARCO, releasing ASARCO from further liability. The motion also proposed that ASARCO pay \$500 in settlement of the \$800 fine assessed by the judge. In an order dated December 2, 1996, we denied this motion without prejudice. We concluded that, to avoid the possibility of future litigation, the parties were required to indicate whether ASARCO's payment to Hopkins represented a net amount to be paid to Hopkins or whether deductions were to be taken out of the payment. We also concluded that the parties failed to adequately support their proposed settlement of the penalty assessed by the judge, as they were required to do under Commission Procedural Rule 31(b)(3), 29 C.F.R. § 2700.31(b)(3). We invited the parties to file a revised joint motion addressing these two problems.

On December 20, 1996, the parties filed the Joint Motion. In the Joint Motion, the parties state that ASARCO's \$15,000 payment to Hopkins is subject to all applicable payroll deductions withholding, and they have complied with Commission Procedural Rule 31(b)(3) by reciting facts in support of their proposal to reduce the penalty assessed by the judge from \$800 to \$500.

Oversight of proposed settlements is committed to the Commission's sound discretion. *Pontiki Coal Corp.*, 8 FMSHRC 668, 674-75 (May 1986). The Commission has exercised this discretion in the past in both section 105(c)(2) and section 105(c)(3) discrimination cases. *See, e.g., Reid v. Kiah Creek Mining Co.*, 15 FMSHRC 390 (March 1993); *Secretary of Labor on behalf of Gabossi v. Western Fuels-Utah, Inc.*, 11 FMSHRC 134, 135 (February 1989); and *Secretary of Labor on behalf of Corbin v. Sugartree Corp.*, 9 FMSHRC 197, 198 (February 1987). We have reviewed the Joint Motion and the record and, upon full consideration, we grant the motion and approve the settlement.

Accordingly, the Commission's direction for review is vacated and this proceeding is dismissed.

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<sup>2</sup> Hopkins declined the offer of reinstatement.

<sup>3</sup> In its petition, ASARCO also raises the question of whether the judge properly concluded that ASARCO violated 30 C.F.R. § 57.14100(b) in connection with its discharge of Hopkins. *See* 18 FMSHRC at 331-34, 336. Since the Joint Motion requests Commission approval of ASARCO's withdrawal of its petition, this issue is moot.

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Mary Lu Jordan, Chairman

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner