

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET N.W., 6TH FLOOR

WASHINGTON, D.C. 20006

March 15, 1996

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
on behalf of	:	
WILLIAM KACZMARCZYK	:	
	:	
v.	:	Docket No. PENN 95-1-D
	:	
READING ANTHRACITE COMPANY	:	

BEFORE: Jordan, Chairman; Doyle, Holen, Marks and Riley, Commissioners

DECISION

BY THE COMMISSION:

This discrimination proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On May 24, 1995, Administrative Law Judge Arthur J. Amchan determined that the Reading Anthracite Company (“Reading”) had violated section 105(c) of the Mine Act, 30 U.S.C. § 815(c), when it transferred William Kaczmarczyk from a light duty position to workers’ compensation status. 17 FMSHRC 784 (May 1995) (ALJ). On September 28, 1995, a hearing was held on the issues of civil penalty and damages. 17 FMSHRC 2065, 2066 (November 1995) (ALJ). The parties stipulated that Kaczmarczyk was entitled to receive \$4,942.42 “to compensate for economic loss” as a result of the discrimination. *Id.* at 2066. The judge awarded an additional \$156 to compensate Kaczmarczyk for travel expenses that he incurred in seeking another job, for total “damages” of \$5,098.42. *Id.* at 2066-67, 2069.

In December 1995, Reading paid Kaczmarczyk \$3,945.06. Reading apparently treated all or most of the monetary award as wages subject to income tax withholding. On December 22, 1995, the Secretary filed a petition for discretionary review with the Commission. The Secretary stated that an attempt was made to resolve the dispute with Reading’s counsel but that Reading was unwilling to retreat from the position that the monetary award was subject to withholding allowances and taxes. PDR at 3. The Secretary sought review from the Commission, rather than reconsideration from the judge, because the judge no longer had jurisdiction under Commission Rule 69(b), 29 C.F.R. § 2700.69(b) (1995), once his decision issued. *Id.* at 1-2. The Secretary

concluded that, “[s]ince the record is unclear as to the intention of the parties and the judge’s order is not clear on the issue of allocation of the monetary award,” the matter should be remanded to the judge for clarification. *Id.* at 3-4. Reading did not respond.

On December 29, 1995, the Commission granted the petition and stayed briefing pending further order of the Commission.

Apparently Reading does not dispute that, under the terms of the stipulation approved by the judge and his further order regarding travel expenses in the amount of \$156, Kaczmarczyk is entitled to a gross amount of \$5,098.42. There is, however, disagreement between the parties as to whether that amount is subject to income tax withholding in its entirety. That issue is governed by the terms of the Internal Revenue Code, not the Mine Act. In order for both Reading and Kaczmarczyk to treat the damage award properly for income tax purposes, the basis for the stipulated damages must be categorized in appropriate detail.

Accordingly, we remand the matter for further appropriate proceedings.

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Mary Lu Jordan, Chairman

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Joyce A. Doyle, Commissioner

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Arlene Holen, Commissioner

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner