

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

June 27, 2000

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
on behalf of GRANT NOE, JR.	:	
	:	
v.	:	Docket No. KENT 99-248-D
	:	
J & C MINING, L.L.C., and	:	
MANALAPAN MINING COMPANY, INC.	:	

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

ORDER

BY THE COMMISSION:

In this discrimination proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act” or “Act”), Administrative Law Judge Gary Melick issued a decision dismissing a complaint brought by the Secretary of Labor on behalf of Grant Noe, Jr., alleging discrimination in violation of section 105(c)(1) of the Act, 30 U.S.C. § 815(c)(1). 22 FMSHRC 404, 410-11 (Mar. 2000) (ALJ). In a related temporary reinstatement proceeding, Docket No. KENT 99-174-D, the judge had issued a decision approving a settlement agreement, providing for the temporary economic reinstatement of Noe by J & C Mining, LLC (“J&C”). Unpublished Order at 1-2 (May 17, 1999).

On June 20, 2000, the operators, J&C and Manalapan Mining Company, Inc. (“Manalapan”) filed a Motion to Expedite Review by Commission. In the motion, the operators state that, having prevailed before the judge, they “desire relief from the order requiring payment of temporary economic benefits” to Noe. Mot. at 1. In addition, they request that review before this Commission be expedited, and that the time for filing a reply brief by the Secretary be reduced from 20 days to 10 days. Mot. at 2.

Upon consideration of the motion, the operators’ request for relief from the May 17, 1999 order providing for the economic reinstatement of Noe is denied.¹ *See Secretary of Labor on behalf*

¹ We note that, on June 19, 2000, the United States District Court for the Eastern District of Kentucky issued an order granting the Secretary’s motion for a preliminary injunction and temporary restraining order requiring J&C and Manalapan to reinstate Noe temporarily, pending

of *Bernardyn v. Reading Anthracite Co.*, 21 FMSHRC 947, 949 (Sept. 1999) (“the language of the Mine Act requires that a temporary reinstatement order remain in effect while the Commission review the judge’s decision”). Furthermore, the Commission will be expediting these proceedings as it is statutorily required to do. *See* 30 U.S.C. § 815(c)(3) (“Proceedings under this section shall be expedited by the Secretary and the Commission.”); *see also Bernardyn*, 21 FMSHRC at 950 (recognizing the appropriateness of expediting cases involving parallel temporary reinstatement proceedings). Nonetheless, the operator’s request to reduce the period for filing the Secretary’s reply brief is denied because such a reduction would not materially advance the Commission’s expedited consideration of the case.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

resolution of this discrimination proceeding. *Secretary of Labor v. J & C Mining, L.L.C.*, No. 00-217 (E.D. Ky., June 19, 2000). In the order, the Court stated that after the issuance of Judge Melick’s March decision, the operators ceased economic reinstatement of Noe. *Id.* at 2.

Distribution

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