

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

July 10, 1996

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket Nos. WEVA 93-394-D
ADMINISTRATION (MSHA),	:	WEVA 93-395-D
on behalf of CLETIS R. WAMSLEY,	:	WEVA 93-396-D
ROBERT A. LEWIS, JOHN B. TAYLOR,	:	WEVA 93-397-D
CLARK D. WILLIAMSON and	:	WEVA 93-398-D
SAMUEL COYLE	:	
	:	
	:	
v.	:	
	:	
MUTUAL MINING, INC.	:	

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

ORDER

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” or “Act”). Following an evidentiary hearing, Administrative Law Judge Arthur J. Amchan concluded that Mutual Mining, Inc. (“Mutual”) violated section 105(c) of the Mine Act, 30 U.S.C. § 815(c), when it terminated five miners. *Secretary of Labor ex rel. Wamsley v. Mutual Mining, Inc.*, 16 FMSHRC 1304, 1320 (June 1994) (ALJ). The judge assessed a civil penalty of \$5,000 for the section 105(c) violation, awarded the miners back pay, and directed that any unemployment compensation that the miners received following their discharge be deducted from back pay. 16 FMSHRC 2371, 2372-73 & n.1 (November 1994) (ALJ). The Commission thereafter denied petitions for discretionary review filed by Mutual and the Secretary of Labor.

Subsequently, Mutual and the Secretary filed petitions for review in the U.S. Court of Appeals for the Fourth Circuit. On April 3, 1996, the court issued its decision affirming in part and reversing in part the decision of the Commission. *Secretary of Labor ex rel. Wamsley v. Mutual Mining, Inc.*, Nos. 95-1130 and 95-1212 (4th Cir.). The court affirmed the judge’s determination that the five miners were discriminatorily discharged in violation of section 105(c) of the Mine Act. The court reversed the judge’s deduction of unemployment compensation from

the back pay awards.¹

On May 28, 1996, the court issued its Mandate, Opinion and Certified Judgment in this matter, returning the case to the Commission's jurisdiction.

¹ Chairman Jordan and Commissioner Marks note that in reversing the back pay determination, the court held that the Commission owed deference to the Secretary's view on the deductibility of unemployment compensation. *Wamsley*, slip op. at 6-9. The court disapproved *Meek v. Essroc Corp.*, 15 FMSHRC 606, 616-18 (April 1993), in which the Commission announced a rule requiring the deduction of unemployment compensation from all back pay awards, and *Secretary of Labor ex rel. Nantz v. Nally & Hamilton Enterprises, Inc.*, 16 FMSHRC 2208, 2216-20 (November 1994), which upheld *Meek*. *Wamsley*, slip op. at 8-9. The court determined the Secretary's interpretation to be a reasonable one that "effectuates the health and safety goals of the Act." *Id.* at 9-10.

Pursuant to the court's order, we remand this matter to the judge to recalculate the miners' back pay awards and we direct the judge not to deduct unemployment compensation received by the miners from their awards.

Mary Lu Jordan, Chairman

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner