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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

ARNOLD SHARP,
COMPLAINANT

v.

BIG ELK CREEK COAL CO.,
INC.,
RESPONDENT

DISCRIMINATION PROCEEDING

Docket No. KENT 86-149-D

No. 1 Surface Mine

SUPPLEMENTAL DECISION

Appearances: Leon L. Hollon, Esq., Hazard, Kentucky, for
Complainant; Stephen C. Cawood, Esq.,
Pineville, Kentucky, for Respondent.

Before: Judge Fauver

A decision on liability was entered on July 22, 1987,
holding that Respondent discharged Complainant in violation of |
105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30
U.S.C. | 801 et seq., on May 28, 1986. The decision provided that
the parties should meet in an effort to stipulate the amount of
back pay, interest and litigation expenses due the Complainant,
and to submit a proposed order for relief.

The parties have submitted a proposed order, agreed to by
Complainant and the attorneys for Complainant and Respondent,
with their motion for approval of the settlement reflected by the
proposed order.

Paragraphs one through six of the proposed order, with minor
changes, are approved, but paragraphs seven and eight are not
deemed to be appropriate in an order for relief under the
statute.

ORDER

Based upon the proposed order as approved herein, it is
ORDERED that:

1. Within three days following receipt of this Order
Respondent shall pay to the Complainant the total sum of \$45,000,
representing past wages, together with interest and all

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reimbursible expenses incurred by Complainant in connection with this pending matter.

2. Respondent shall reinstate the Complainant to his previous job as a rock truck driver at the Respondent's No. 1 Surface Mine in Leslie County, Kentucky, at that mine's prevailing rate for said classification (or \$9.00 per hour), said reinstatement to be effective immediately upon receipt of this Order.

3. At the conclusion or termination of Respondent's operations or services for Blossom Coal Company at Respondent's No. 1 Surface Mine, Respondent shall transfer the Complainant, or cause the Complainant to be transferred, to either a mining operation conducted by Red Star Coal Company or a mining operation conducted by Golden Oak Mining Company, in a job classification to be determined by the Respondent, provided, however, that Complainant shall receive for such job classification the prevailing pay scale for rock truck drivers at the mining operation to which he is transferred.

4. Should a rock truck driver's job become available at such new mine location, Respondent shall offer such rock truck driver's job to Complainant, if he remains in the Respondent's employment at the time such rock truck driver's job becomes available.

5. Respondent shall retain Complainant in Respondent's employment for a period of at least one year from the date of his reinstatement under this Order, provided, however, that Complainant shall satisfactorily perform his job and comply with Respondent's work rules and provided that Respondent or its affiliates remain in the coal business in Eastern Kentucky.

6. Respondent shall pay to Leon L. Hollon, Esq., counsel for the Complainant, a reasonable attorney's fee to be approved by the Judge.

The decision entered on July 22, 1987, shall not be made final until an order is entered herein approving an attorney's fee for Complainant's attorney.

William Fauver
Administrative Law Judge

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AGREED TO:

Arnold Sharp,
Complainant

Leon L. Hollon
Counsel for Complainant

Stephen C. Cawood
Counsel for Respondent