

CCASE:
SOL (MSHA) v. COBRA MINING
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
AMOS HICKS,

COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. VA 89-72-D
MSHA Case No. NORT CD-89-18

v.

COBRA MINING, INC.,
JERRY K. LESTER AND
CARTER MESSER,

RESPONDENTS

DECISION

Before: Judge Weisberger

On June 4, 1991, a Decision on Remand was issued which, intra alia directed Complainant to file a statement indicating the specific relief requested, and allowed Respondent to file a reply 20 days from the date of service upon it of Complainant's statement. On June 24, 1991, Complainant filed his statement of requested relief, and Respondent filed their response on July 15, 1991.

In his statement Complainant seeks back wages of \$5,111.59, along with interest in the amount of \$1,024.85. He also seeks telephone charges of \$57.18, mileage of \$319.18, medical bills of \$490.91, lost wages for trial attendance of \$100 and hotel costs for trial attendance of \$47, all of which are essentially alleged to be costs incurred as a consequence of Respondents discriminatory discharge of him. Complainant also seeks \$95.39, for work boots which he alleges are required in the State where he obtained new employment. Complainant also asserts further that subsequent to his discharge by Respondent he did not have any income, and could make payments on his truck which was repossessed and resold causing him to lose his equity in the truck totally \$4,818.80. He thus seeks that amount plus \$5,042.20, the amount still owned by him after the repossession. Also the Secretary seeks a civil penalty of \$1,500.

Respondents' reply contains an objection only to Complainant's request for consequential damages arising out of the loss of his truck. As such, I conclude that, inasmuch as Respondents have not specifically objected to any other item of

Complainant's request for damages, that they be allowed.

In resolving the issue of Respondents' liability for consequential damages arising out of the repossession of Complainant's truck, I note that the legislative history of the Federal Mine Safety and Health Act of 1977 ("the Act") reveals an intent to require that the scope of relief provided shall encompass ". . . all relief that is necessary to make the complaining Party whole. . . ." (Senate Report on the Act, S. Rep. No. 181, 95 Cong., 1st sess., at 37 (1977), reprinted in Legislative History of the Federal Mine Safety and Health Act of 1977, "Legislative History") at 625 (1978)). Thus it is Respondents' obligation to put Complainant in the position he would be in if there had not been a discriminatory discharge in violation of the Act. (Secretary on behalf E. Bruce Nolan v. Luck Quarries, 2 FMSHRC 954 (1980) (ALJ Merlin)). I thus find that the lost of equity in the truck occurred as a direct consequence of Complainant's have discharge and hence, to make Complainant whole Respondents have the obligation of replacing the lost equity in the truck (Nolan supra at 961). However, the amount still owing on the loan constitutes Complainant's obligation under the loan, and does not appear to be related to his having lost his employment. Accordingly, Respondents are not obligated to pay him that sum.

It is hereby ORDERED that, within 30 days of this decision, Respondents shall pay Complainant the following amount:

Lost Equity in the Truck	\$4,818.80
Back wages	5,111.59
Interest on Back wages	1,024.85
Telephone charges	57.18
Work Boots	95.39
Automobile mileage	319.18
Medical Bills	490.91
Lost wages for trial attendance	100.00
Hotel Cost for trial attendance	47.00

It is further ORDERED within 30 days of this Decision Respondent shall pay a civil penalty of \$1,500.

It is further ORDERED that the Decision issued June 4, 1991 is now final.

Avram Weisberger
Administrative Law Judge