

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
601 NEW JERSEY AVENUE N. W., SUITE 9500
WASHINGTON, D.C. 20001
July 28, 2011

SECRETARY OF LABOR, MSHA,	:	TEMPORARY REINSTATEMENT
on behalf of THURMAN WAYNE	:	PROCEEDING
PRUITT,	:	
Complainant	:	Docket No. KENT 2011-1152-D
	:	MADI-CD-2011-08
v.	:	
	:	
	:	
GRAND EAGLE MINING, INC.,	:	Grand Eagle Prep Plant
Respondent	:	Mine ID 15-19011

**AMENDED ORDER GRANTING APPLICATION FOR
TEMPORARY REINSTATEMENT**

Appearances: Jennifer Booth Thomas, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, on behalf of the Secretary;
Jeffrey K. Phillips, Esq., Steptoe & Johnson, PLLC, Lexington, Kentucky, on behalf of the Respondent.

Before: Judge Melick

On July 13, 2011, the undersigned issued a decision and order granting the Secretary's application for temporary reinstatement in the captioned case directing Grand Eagle Mining Inc., ("Grand Eagle") to immediately reinstate Thurman Wayne Pruitt on a temporary basis "to the same or equivalent job at the Grand Eagle Prep Plant at the same rate of pay and with the same benefits he had at the time of his discharge on March 31, 2011". Respondent has now filed a motion to amend the order for temporary reinstatement to permit it to economically reinstate Mr. Pruitt pending a decision on the merits of his complaint rather than have Mr. Pruitt return to its property. The Secretary, on behalf of Mr. Pruitt, opposes the motion for economic reinstatement and demands that he be physically returned to his former job at the mine premises.

Grand Eagle cites as grounds for its motion that the undisputed evidence at the temporary reinstatement hearing demonstrates that Pruitt has established that he is a danger to himself and others at Grand Eagle Prep Plant and would continue to be such a danger if allowed to return. Grand Eagle notes that Pruitt, by his own admission, backed a 988-caterpillar loader into the tail roller of a stacker in January 2011 thereby causing \$30,000.00 in property damage. It further notes that on March 31, 2011, Pruitt violated company's rules and Federal safety regulations by working on an elevated beltline without locking and tagging it out and at the same time was working at least 20 feet above the ground while not wearing fall protection. Grand Eagle notes that Pruitt's conduct could have caused serious injuries or death to him and subjected Grand Eagle to a closure order. It further claims that as a result of these admitted activities, Pruitt was fired on March 31, 2011. Grand Eagle further argues that the return of Pruitt to mine property would be disruptive and affect the morale of the remaining work force.

I find that in the light of the admitted activities by Mr. Pruitt at the Grand Eagle facility, it may reasonably be inferred that he indeed, represents a safety hazard to himself and others and present a potential financial liability to Grand Eagle if he were to be returned to his former job through temporary reinstatement¹. In addition, while no evidence was presented at hearings regarding the potentially disruptive nature of Mr. Pruitt's return to the job site, it may reasonably be inferred that the forced temporary reinstatement of Mr. Pruitt would likely have a negative impact on the remaining work force. Under the circumstances, I find that temporary economic reinstatement is the appropriate remedy and in compliance with section 105 (c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. ("the Act"). Clearly, providing a miner with economic reinstatement by paying full salary and benefits fulfills the policy justifications of the Act by protecting the miners' financial well-being while he awaits trial on the merits.

The Secretary argues that a Commission Administrative Law Judge does not have the authority to award temporary economic reinstatement in lieu of actual physical reinstatement. However Section 105(c)(2) of the Act grants the Commission broad authority in discrimination proceedings "to take such affirmative action to abate the violation as the Commission deems appropriate including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pays and interest." Indeed, Commission Judges have regularly ordered economic reinstatement in lieu of physical reinstatement in discrimination proceedings. See *Secretary on behalf of Gatlan v. Ken American Resources Inc.*, 31 FMSHRC 1050, 1051 (2009); *North fork v. Mine Safety and Health Administration* 33 FMSHRC 589 (2011).

I find from this language that the commission and its judges therefore have the authority to award economic reinstatement in lieu of actual physical reinstatement of the miner pending final hearings on the merits.

ORDER

The decision and order granting the Secretary's application for temporary reinstatement is hereby modified to permit the miner operator to provide Thurman Wayne Pruitt with economic reinstatement to include all the pay and benefits Mr. Pruitt was receiving prior to his discharge on March 31, 2011.

Gary Melick
Administrative Law Judge
(202) 434-9977

¹ In light of the undisputed evidence at hearings that Pruitt also violated mandatory safety standards, Grand Eagle could also force mine closure orders and significant civil penalties.

Distribution:(By Certified Mail, and Email)

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