

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

December 24, 1998

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION (MSHA),	:	
on behalf of PAUL MIDDLETON,	:	Docket No. KENT 99-60-D
Complainant	:	
v.	:	BARB CD 98-19
	:	
J & C MINING, L.L.C.,	:	Mine No. 1
Respondent	:	Mine ID 15-17707

DECISION APPROVING SETTLEMENT

Appearances: Brian Dougherty, Esq., Office of the Solicitor, U. S. Department of Labor, Nashville, Tennessee, for the Complainant
Susan Lawson, Esq., Harlan, Kentucky, for the Respondent.

Before: Judge Weisberger

On April 27, 1998, Paul Middleton filed a Discrimination Complaint with the Mine Safety and Health Administration (MSHA) alleging that he was discharged by J & C Mining, L.L.C. (AJ & C®) from his position as a day-shift foreman as a result of his refusal, on two occasions, to instruct his crew to work in unsafe conditions, and his complaint to J & C's owner regarding his direct supervisor's unsafe instructions.

On November 17, 1998, the Secretary filed an Application for Temporary Reinstatement alleging, in essence, that the Complaint of Discrimination filed by Middleton was not frivolous. On November 17, 1998, the Commission's Docket Office received a statement from J & C alleging that Middleton was terminated for just cause with no discriminatory intent. In its statement, J & C also requested a hearing. On November 30, 1998, the undersigned arranged a telephone conference call between the Secretary and J & C's representative in order to arrange a hearing date. After discussion, the Secretary agreed that the hearing should be scheduled to commence December 16, 1998. The matter was heard in Kingsport, Tennessee, on December 16-17, 1998.

At the hearing, the Parties reached a settlement that disposes of the Application for Temporary Reinstatement. The terms of parties' settlement, are set forth in the transcript of this proceeding, and are incorporated herein. I find that the settlement is appropriate considering the record in this case, and it is approved.

ORDER

It is ordered that the Parties shall abide by all the terms of the settlement. It is further ordered that, based on the parties' agreement and interest of justice, the transcript of the hearing in this proceeding be included in the record of the companion discrimination proceeding, Docket No. KENT 99-61-D. It is further ordered that the Application of Temporary Reinstatement be **DISMISSED**.

Avram Weisberger
Administrative Law Judge
703-756-6215

Distribution:

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