

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
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March 27, 1995

SECRETARY OF LABOR, : TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH : PROCEEDING
ADMINISTRATION (MSHA), :
on behalf of KEITH D. JAMES, : Docket No. WEST 95-151-D
Applicant :
 :
v. :
 :
CORDERO MINING COMPANY, : Cordero Mine
Respondent : 48-00992

DECISION APPROVING TEMPORARY REINSTATEMENT
and
ORDER OF DISMISSAL

Appearances: Margaret A. Miller, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Applicant;
Charles W. Newcom, Esq., Sherman & Howard,
Denver, Colorado,
for Respondent.

Before: Judge Cetti

I

This Discrimination Proceeding concerns an Application for Temporary Reinstatement. It was filed on January 20, 1995, by the Secretary of Labor on behalf of Keith D. James. The action was brought pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., Supp. 1, 1977, 30 U.S.C. ' 815(c)(2) and Commission Rule 45, 29 C.F.R. ' 2700.45.

Within 10 days following receipt of the Secretary's application to temporary reinstatement Respondent objected to the application and requested a hearing.

The parties declined an immediate hearing, requesting instead that the matter be heard on March 22-24, 1995, in Gillette, Wyoming at the same time as the regular discrimination hearing on

the merits for permanent reinstatement and other remedies as set forth by the Secretary in Docket No. WEST 95-226-D.

II

Undisputed Facts

1. Respondent Cordero Mining Co. supervises, operates, and controls mining activities at the Cordero Mine (MSHA I.D. No. 49-00992) located in Campbell County, Wyoming, and is therefore an "operator" as defined by Section 3(d) of the Act.

2. The products of the Cordero Mine enter and affect interstate commerce.

3. At all times relevant to this proceeding Keith D. James was employed by Respondent as an equipment operator and therefore was a "miner" as defined in Section 3(g) of the Act.

4. On or about October 6, 1994, Respondent terminated the employment of Keith D. James

5. Respondent is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' ' 801 et seq. ("the Act").

6. The presiding Administrative Law Judge has jurisdiction in this matter.

III

The hearing was held in Gillette, Wyoming on March 22 and 23 of 1995. At the hearing the parties advised the Judge on the record that the parties had mutually agreed to a voluntary economic temporary reinstatement beginning February 27, 1995 and continuing thereafter pending the decision in Docket No. WEST 95-226-D which the parties are now briefing. The parties requested the Judge's approval of their voluntary agreement. On review of the present record I approved the voluntary temporary reinstatement agreement. There being no further issues in Docket No. WEST 95-151-D said proceeding for temporary reinstatement is **DISMISSED.**

August F. Cetti

Administrative Law Judge

Distribution:

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