

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

**MAY 2 81992**

CHARLES T. SMITH, : DISCRIMINATION PROCEEDING  
Complainant :  
v. : Docket No. KENT 90-30-D  
: BARB CD 89-27  
: :  
KEM COAL COMPANY, :  
Respondent :

DECISION ON DAMAGES

Before: Judge Fauver

The Decision on Remand, April 28, 1992, found Respondent liable for a discriminatory discharge of Complainant in violation of § 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et sea.

The parties have stipulated that Complainant's back pay and interest through April 30, 1992, are \$46,157.12 and a reasonable attorney fee and costs are \$6,247.50 through April 30, 1992. In addition, the parties have stipulated a method of determining any damages for medical expenses due Complainant.

ORDER

WHEREFORE IT IS ORDERED that:

1. Respondent shall, within 10 days of the date of this Decision, pay Complainant \$46,157.12 in back pay and interest through April 30, 1992, plus additional back pay and interest accruing from April 30, 1992, until the date of payment.

2. Respondent shall, within 10 days of the date of this Decision, pay to counsel for Complainant \$6,247.50 representing a reasonable attorney fee and costs through April 30, 1992, plus any additional reasonable attorney fee and costs accruing from April 30, 1992, until the date of payment. Upon such payment, Counsel for Complainant shall promptly reimburse Complainant for any prior payments made by Complainant toward an attorney fee or litigation costs in this matter.

3. Within 10 days of this Decision, or a later date if stipulated by the parties, the parties shall fully comply with Paragraph 5 of their Stipulation of Monetary Award Update, and if they agree upon damages for medical expenses such amount shall be

promptly paid to Complainant. If they fail to agree on medical damages and Complainant contends such are due, Complainant may file a claim for such damages in a supplemental proceeding before the Commission within 30 days after such disagreement is communicated by Respondent to Complainant.

4. This Decision on Damages together with the prior Decision on Remand constitutes the judge's final disposition of this proceeding.

  
William Fauver  
Administrative Law Judge

Distribution:

Michael S. Endicott, Esq., L.E., "Ed" Spencer and Associates, 83 Main Street, P.O. Box 1176, Paintsville, KY 42140 (Certified Mail)

Timothy Joe Walker, Esq., Reece, Lang & Breeding, P.S.C., London Bank & Trust Building, 400 South Main Street, P. O. Drawer 5087, London, KY 40745-5087 (Certified Mail)

/fas