

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041
May 15, 1996

LANCE A. PAUL, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. WEST 95-228-DM
: MSHA Case No. WE MD 95-04
NEWMONT GOLD COMPANY, :
Respondent : Gold Quarry
: Mine ID 26-00500

DECISION APPROVING PROPOSED CIVIL PENALTY

Before: Judge Feldman

This matter is before me based upon a discrimination complaint filed on March 1, 1995, pursuant to section 105(c)(3) of the Federal Mine Safety and Health Act of 1977 (the Mine Act), 30 U.S.C. § 815(c)(3) by the complainant, Lance A. Paul, against the respondent, Newmont Gold Company (Newmont). On February 22, 1996, a decision on liability was released wherein it was determined that Newmont's November 10, 1994 discharge of Lance Paul was discriminatorily motivated and in violation of section 105(c) of the Mine Act. 18 FMSHRC 181. A Supplemental Decision approving the parties' Joint Stipulation for Settlement awarding Lance Paul economic reinstatement in lieu of reemployment was issued on April 11, 1996. 18 FMSHRC __.

The February 22, 1996 decision on liability, citing Commission Rule 44(b), 29 C.F.R. § 2700.44(b), requested the Secretary to consider filing with this Commission an appropriate petition for the purpose of proposing a civil penalty for Newmont Gold Company's violation of section 105(c) of the Mine Act.

On March 18, 1996, the Secretary filed a Petition for Assessment of Civil Penalty proposing imposition of a civil penalty of \$9,000.00 in this matter. On May 7, 1996, Newmont, through counsel, filed a response to the Secretary's Petition stating that, "in the interests of completing this matter without further cost and expense of litigation, [it] does not contest the proposed penalty assessment." I construe the respondent's decision to pay the proposed civil penalty as a motion to approve settlement.

ORDER

I have considered the record in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. **WHEREFORE, IT IS ORDERED**

that Newmont Gold Company tender payment of a civil penalty of \$9,000.00 to the Mine Safety and Health Administration in satisfaction of the subject violation of section 105(c) of the Mine Act. Payment shall be made within 30 days of this decision. Upon timely receipt of this civil penalty, and Newmont's timely payment to Paul of the stipulated relief as specified in the April 11, 1996, decision on damages, this case **IS DISMISSED**.

Jerold Feldman
Administrative Law Judge

Distribution:

Lance A. Paul, P.O. Box 21115, Crescent Valley, NV 89821
(Certified Mail)

Lance A. Paul, c/o Operating Engineers Local 3, 1094 Lamoille Highway, Elko, NV 89801 (Certified Mail)

Charles W. Newcom, Esq., Sherman & Howard L.L.C., First Interstate Tower North, 633 Seventeenth Street, Suite 3000, Denver, CO 80202 (Certified Mail)

Don R. Hullinger, Director, Human Resources, Newmont Gold Company, P.O. Box 669, Carlin, Nevada (Certified Mail)

Mark R. Malecki, Esq., U.S. Department of Labor, Office of the Solicitor, 4015 Wilson Boulevard, Arlington, VA 22203 (Certified Mail)

/mca