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SOL (MSHA) V. SMITH BROTHERS
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
BRYANT M. HATFIELD, JR.,
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. WEVA 87-156-D
HOPE CD-87-5

No. 1 Mine

v.

SMITH BROTHERS CONSTRUCTION,
INC.,
RESPONDENT

DECISION APPROVING SETTLEMENT
ORDER TO PAY

Before: Judge Merlin

This is a discrimination proceeding arising under section 105(c) of the Federal Mine Safety and Health Act of 1977. 30 U.S.C. 815(c). On March 30, 1987, the Secretary of Labor, on behalf of the complainant, Bryant M. Hatfield, Jr., filed this complaint alleging violations of section 105(c)(1) of the Act. 30 U.S.C. 815(c)(1).

The Secretary's complaint alleged inter alia, that the Complainant was illegally discriminated against, on or about December 16, 1986, when a foreman employed by the Respondent threatened him with physical harm because of complaints Mr. Hatfield expressed, or intended to express, concerning preshift belt examinations at Respondent's No. 1 Mine.

On August 5, 1987, the Secretary and the Respondent, Smith Brothers Construction, Inc., filed a joint motion to approve settlement for the violations involved in this case. The Complainant has signed a separate notice evidencing his approval of the settlement agreement.

The joint motion to approve the settlement provides, in relevant part:

Smith Brothers construction, Inc., admits that Bryant M. Hatfield, Jr., was illegally discriminated against, in violation of Section 105(c)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(1)

(hereinafter "the Act"), on or about December 16, 1986 when a foreman employed by Smith Brothers Construction, Inc., threatened Mr. Hatfield with physical harm because of complaints Mr. Hatfield had made, or was intending to make, concerning preshift belt examinations at Respondent's No. 1 mine.

Smith Brothers Construction, Inc., agrees to remove from Mr. Hatfield's employment records all adverse remarks about his having exercised his statutory right to file or make complaints alleging dangers on safety or health violations under the Act.

Smith Brothers Construction, Inc., agrees to pay a civil penalty of \$200.00 for its violation of Section 105(c) of the Act. This penalty is reasonable under the criteria set forth at Section 110(i) of the Act and will serve to effect the intent and purposes of the Act. The amount of this penalty is appropriate to the size of the business and the history of previous violations. The Respondent displayed a moderate degree of negligence in failing to prevent interference with Mr. Hatfield's exercise of his statutory rights. Respondent's management assigned extra duties to its foremen because of complaints made by Mr. Hatfield, but no precautions had been taken to protect Mr. Hatfield's rights in this potentially volatile situation. Although Mr. Hatfield was not intimidated by the threat made by Respondent's foreman, it is reasonably likely that the four other miners who were present when this threat was made would be deterred from exercising their right to make or file complaints because of this action on the part of Respondent. Good faith was demonstrated by the foreman's subsequent verbal apology to Mr. Hatfield, and by the Respondent's decision not to arouse further animosity by contesting this matter. There has been no assertion by the Respondent that its continued ability to conduct business would be threatened by the payment of a civil penalty in this case.

I accept the foregoing representations and approve the recommended settlement. Accordingly, the joint motion to approve

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settlement is GRANTED and the operator is ORDERED TO PAY \$200
within 30 days from the date of this decision.

Paul Merlin
Chief Administrative Law Judge