FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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July 15, 2025

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION ("MSHA"), on behalf of CAESAR MIRANDA, Complainant	:	TEMPORARY REINSTATEMENT PROCEEDING Docket No. WEST 2025-0253-TR MSHA No. RM-MD-2025-03
v.	:	
DIXON ROCK AND MATERIALS, LLC, Respondent	:	Mine: Dixon Rock and Materials Mine ID: 02-03504

DECISION AND ORDER OF TEMPORARY REINSTATEMENT

Appearances: Rose Meltzer, Esq.; Joshua Falk, Esq., U.S. Department of Labor, Office of the Solicitor, San Francisco, California, for the Secretary of Labor;

Donna Vetrano Pryor, Esq., Husch Blackwell LLP, Denver, Colorado, for Dixon Rock and Materials, LLC.

Before: Judge Bulluck

This matter is before me upon the Application for Temporary Reinstatement filed by the Secretary of Labor ("Secretary") on May 23, 2025, pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 ("Mine Act"), 30 U.S.C. § 815(c)(2), seeking an order requiring Dixon Rock and Materials, LLC ("Dixon Rock") to temporarily reinstate Caesar Miranda to his position of laborer at Dixon Rock.

On June 3, 2025, pursuant to 29 C.F.R. § 2700.45(c), Dixon Rock requested a hearing on the Secretary's Application. A virtual hearing was conducted on June 20 via the Zoom platform, and the parties' Post-hearing Briefs, filed July 2, are of record.

For the reasons set forth below, and consistent with Section 105(c)(2) of the Mine Act, I grant the Secretary's Application and order Temporary Reinstatement of Miranda.

I. Joint Stipulations

The parties have stipulated as follows:

1. The Federal Mine Safety and Health Review Commission has jurisdiction over the temporary reinstatement proceeding.

2. Dixon Rock and Materials, LLC, is the operator, as defined in Section 3(d) of the Mine Act, 30 U.S.C. § 802(d).

3. Dixon Rock and Materials, LLC, has products that enter commerce or has operations or products that affect commerce and is, therefore, a mine, as defined in sections 3(b), 3(h), and 4 of the Mine Act, 30 U.S.C. §§ 802(b), (h), and 803.

4. Caesar Miranda is a miner, as defined under section 3(g) of the Mine Act, 30 U.S.C. § 802(g).

Tr. at 6-7.

II. Factual Background

Caesar Miranda was employed by Dixon Rock, an aggregate surface mine with approximately 25 employees, from March 31 to April 18, 2025; John Dixon and Carol Ptak are co-owners, and Dixon is also the foreman. Tr. at 13, 103, 166. Miranda was employed as a general laborer in a full-time position, in which his duties included clearing debris and shoveling under conveyor belts. Tr. at 13-14, 40.

On April 17, Miranda filed a Discrimination Complaint with MSHA, in which he alleged that on April 8, after being assigned to clear sticks and other debris from a rock pile, and being told by Dixon to work at a faster pace, he raised concerns with Dixon that working faster posed a safety hazard to himself and other miners. Additionally, he claimed that he requested a respirator due to his concern about high dust levels. Shortly thereafter, according to Miranda, Dixon dismissed him early from work and, subsequently, removed him from the work schedule through April 15. When Miranda returned to work on April 15, Dixon allegedly told him to leave and, in so doing, caused Miranda to believe that he was terminated. See generally, Ex. C-1.

On May 23, the Secretary, pursuant to her investigation and preliminary finding that Miranda's Discrimination Complaint was not frivolously brought, filed an Application for Temporary Reinstatement of Miranda. Sec'y App. at 2-3. The Secretary's Application alleges that Miranda was discharged on April 15 for having raised two safety complaints with Dixon Rock.[1] Sec'y App. at 2.

III. Testimony

A. Caesar Miranda

Complainant, Caesar Miranda, testified that he began working for Dixon Rock on March 31 as a general laborer on a full-time basis, 40 hours per week. Tr. at 13, 40. He stated that he had six years of experience as a miner, and specialized in heavy equipment operation. Tr. at 15.

[1] By Dixon Rock's account, Miranda was separated from employment on April 18. Resp. Br. at 12; Tr. at 198.

He identified his supervisor as the mine's foreman and owner, John Dixon, who was also responsible for managing his work schedule through the Workforce Application ("Workforce App"). Tr. at 14-15.

In illuminating the circumstances giving rise to his alleged termination, Miranda stated that he was concerned about the mine's lack of drinking water, its locked entries and exits, lack of barriers or signage around the conveyer belt, dusty work conditions, and not being provided with a respirator upon request. Tr. at 19, 29-31. According to Miranda, on April 8, when he was picking up sticks and debris in rock piles and under the conveyor belt, he requested a respirator from Dixon, who gave him a dust mask instead. Tr. at 20-21. He explained that he asked for a respirator because he was concerned about the dust, and that he had been experiencing nose bleeds after work due to dust inhalation. Tr. at 21-22, 29. He also testified that he took a photograph of the dust, falling rock, and flying debris hazards. Tr. at 29-31; see Ex. C-2 at 2. On cross-examination, Miranda also stated that he did not report his concerns about lack of signage and barriers, or lack of access to drinking water to anyone in management.[2] Tr. at 41.

Miranda testified that on April 8, following his request for a respirator, he was told to leave the mine before the end of his shift. Tr. at 22. According to him, Dixon "wanted [him] out of there early. He just said you're done for the day. Go home." Tr. at 46. He could not recall precisely when he was told to leave, but believed it to be before the end of his workday. Tr. at 49. Additionally, he testified that on April 9, his schedule on the Workforce App changed, with the remaining days that he was set to work that week blacked-out, indicating that he was no longer scheduled to work on those days. Tr. at 25; Ex. C-6 at 6-7. He stated that he was also taken off the work schedule for the following week, including Monday, April 14, although initially, he had been scheduled to work that day. Tr. at 25. He testified that he did not come to work on April 14, and expressed his belief that his schedule was changed because he had requested Personal Protective Equipment ("PPE") from Dixon. Tr. at 27-28. Miranda stated that, eventually, his Workforce schedule for April 15 switched to "green," indicating that he was scheduled to work. Tr. at 27. According to him, he arrived at the mine at approximately 5:30 am on April 15, and went to the morning meeting in the scale house. Tr. at 26. When Dixon showed up at the meeting, he stated, Dixon asked him why he had not reported to work on April 14, and what he was doing there now. Tr. at 26-27. Miranda testified that he responded that Dixon had taken him off the work schedule. Tr. at 27. On cross-examination, Miranda also stated that, in an ensuing heated exchange between him and Dixon, he called Dixon some profane names. Tr. at 57-60; see Ex. C4 at 4. By his account, Dixon then ordered him to leave the mine, which Miranda understood to mean that he was fired. Tr. at 74, 103-04. He stated that he left the mine, and never returned to work thereafter. Tr. at 74. Miranda also testified that he was on the phone with Bob while he and Dixon were arguing, and that Bob heard the argument, and said to him, "I can hear what's going on. It's safe for you to leave. You've got to leave because he could do whatever he wants; it's his property." Tr. at 57, 62, 68.[3]

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[2] The Secretary concedes that Miranda's other concerns that are not related to his pace of work and respirator request are outside the scope of his April 17 Discrimination Complaint. Sec'y Br. at 8, n.2.

[3] Miranda recalled that it was Bob Mannery whom he called, an MSHA Mesa District employee. Tr. at 57, 62. He testified that he had reported his safety concerns by calling in a

B. Danny Cooper

MSHA Inspector and Special Investigator Danny Cooper, the Secretary's witness, testified that he is in the process of investigating Miranda's Discrimination Complaint filed with MSHA. Tr. at 110-14. He testified that he conducted interviews with Dixon, other mine employees, and Miranda, and that he also received photographs from Miranda. Tr. at 118; Exs. C-2, C-3, C-4, C-5. Cooper stated that, in the first of two interviews, Miranda told him that he brought safety concerns to Dixon's attention, including the use of PPE and being required to work around conveyors discharging falling rock. Tr. at 122-23; Ex. C-3 at 4. Miranda also stated that Dixon told him that he was not picking up sticks and debris from the rock pile fast enough, to which he responded, "I was going at this speed because of tripping hazards and watching [t]he boom of the excavator, so I didn't get smacked; he didn't like that. I told him I had to go at a safe pace, and I had to watch for the rocks coming off the conveyor and the boom of the excavator." Ex. C-3 at 4. Additionally, during that interview, Cooper stated that he asked Miranda about his interaction with Dixon on April 15:

> Question 39: How did JL Dixion [sic] respond when you arrived back at work on April 15, 2025?
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> Answer: Just walked into the meeting spot, and he asked why I was there. I told him because I was scheduled. He said he was the Owner, and he became very combative and hostile. He kept questioning me why I was here, he's the one who does the schedule; he should know I was scheduled to work on Tuesday.
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> Question 40: What slurs did JL Dixion [sic] say to you when you tried to leave the mine site?
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> Answer: He was cussing. His main thing while I was on the phone was I'm right here, like he wanted to fight, as I was walking though, he was yelling and pointing at himself saying I'm right here, not while I was in the meeting but while I was on the phone with Bob, he heard that, I just wanted him to know the situation, he said just to leave, it's their land, and as I was trying to leave.

Ex. C-3 at 5. Miranda admitted, in this second interview, to calling Dixon profane names during the heated exchange on April 15, and also attributed his belief that he was fired on April 15 to Dixon telling him "to go home, you're done . . . I don't want you here, you're done," and instigating a fight. Ex. C-4 at 4.

Cooper testified that during his interview with John Dixon, he was told that Miranda was not fired, but that he no longer worked for Dixon Rock because he was a "no-show." Tr. at 124-

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hazard complaint to the MSHA hotline prior to April 15, and that Bob had contacted him in response. Tr. at 62-64. Additionally, MSHA inspectors had come to the mine on April 14, in response to an anonymous hazard complaint that PPE was not being provided to miners upon request. Tr. at 202-04. Miranda has not alleged that his anonymous hazard complaint was protected activity or connected to his termination, or that Dixon Rock was aware that he had made the complaint.

25; Ex. C-5 at 4. Cooper also stated that he interviewed additional employees who had heard the argument between Dixon and Miranda on April 15, including Miranda swearing at Dixon and saying "fuck this place," as he was leaving. Tr. at 156-59.

Cooper identified one of Miranda's photographs as depicting a high amount of dust at the worksite, and rocks falling from a discharge conveyor with a person working near it at the base of the rock pile. Tr. at 114-15; see Ex. C-2 at 2.

C. Carol Ptak

Carol Ptak, Dixon Rock's sole witness, is co-owner and business administrator of Dixon Rock. Tr. at 165. Ptak testified that Dixon Rock hired Miranda as a laborer based on a skill evaluation, but paid him the higher equipment operator wage, hoping that he could be trained to run the heavy equipment used at the mine. Tr. at 173-74. She explained that a laborer does anything that is required on the ground, including pulling sticks out of rock product. Tr. at 174.

Ptak testified that Miranda was supervised by co-owner and foreman John Dixon, who also coordinates all rock product and monitors safety at the mine. Tr. at 168. She stated that she discussed Miranda's work performance with Dixon, who explained to her that the problem with Miranda was not his work speed, but his tendency to hide behind rockpiles and the scale house, that he had to be reminded several times to get back to work, and that he intended to work directly with Miranda on April 8 because of this problem. Tr. at 183-84. Ptak confirmed that Miranda asked Dixon for a respirator, and that he was given a dust mask. Tr. at 184. She testified that Miranda was not sent home early on April 8, as evidenced by his Workforce App timesheet showing that he was paid for 9.75 hours that day. Tr. at 184-87; Exs. R-8, R-9. She also testified that Miranda was not scheduled for work from April 7 to 13 because of reduction in customer orders. Tr. at 193; see Ex. R-7. Ptak explained that Dixon Rock has large contracts with commercial companies, and that decreased customer demand for product during any given week requires the company to scale back its operations at the mine, beginning with cutbacks to unskilled labor hours. Tr. at 169. She also noted that Miranda was not scheduled to work on April 7 and 8, but that Dixon Rock "cut him a break" by allowing him to work those days since he had shown up at the mine. Tr. at 195-96; see Ex. R-7.

Ptak explained that all employee work schedules are communicated through the Workforce App that all Dixon Rock miners have installed on their cell phones and that, as soon as any schedule change occurs in the Workforce App, the miners receive an immediate notification on their cell phones. Tr. at 170, 174. She stated that Miranda was scheduled to work on April 14 in the Workforce App, but that he did not come to work or call in. Tr. at 195-96; Ex. R-7. Ptak testified that she talked to Dixon about his argument with Miranda on April 15, and that she was told that Dixon had confronted Miranda about being a no-show on April 14, and Miranda had called Dixon some vile names, had thrown up his hands and said "I'm out of here," and then had left the mine. Tr. at 196-97. She stated that following this incident, Dixon did not remove Miranda from the Workforce App schedule for April 16 and 18, but that Miranda never showed up on those days or called the mine or Dixon directly to confirm his employment status. Tr. at 197-98; Ex. R-7. According to Ptak, after two days of not reporting to work, Miranda was deemed to have abandoned his job, "so his employment with Dixon Rock was terminated,

effective the 18th, because of no call/no show." Tr. at 198. Ptak also explained that Dixon Rock's Employee Handbook sets forth its attendance policy, and states that failure to report to work for two consecutive days, without notifying the company, is considered a voluntary resignation; all employees, including Miranda, were required to read the Handbook and sign a confirmation before beginning work. Tr. at 179-81; Exs. R-5 at 4-5, R-6 at 1-2.

IV. Legal Standard

The Mine Act provides protection to miners from discharge or other discriminatory acts, based on their exercise of any statutory right under the Act. 30 U.S.C. § 815(c). Pursuant to section 105(c)(2), "if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint." 30 U.S.C. § 815(c)(2).

It is well settled that the "not frivolously brought" standard is entirely different from the scrutiny applicable to a trial on the merits of the underlying discrimination complaint. In *Jim Walter Resources*, the 11th Circuit Court of Appeals explained the standard as follows:

> The legislative history of the Act defines the 'not frivolously brought' standard as indicating whether a miner's 'complaint appears to have merit' -- an interpretation that is strikingly similar to a reasonable cause standard. In a similar context involving the propriety of agency actions seeking temporary relief, the former fifth circuit construed the 'reasonable cause to believe' standard as meaning whether an agency's 'theories of law and fact are *not insubstantial or frivolous*.'
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> . . . .
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> Congress, in enacting the 'not frivolously brought' standard, clearly intended that employers should bear a disproportionately greater burden of the risk of an erroneous decision in a temporary reinstatement proceeding. Any material loss from a mistaken decision to temporarily reinstate a worker is slight; the employer continues to retain the services of the miner pending a final decision on the merits. Also, the erroneous deprivation of the employer's right to control the makeup of his workforce under section 105(c) is only a *temporary* one that can be rectified by the Secretary's decision not to bring a formal complaint or a decision on the merits in the employer's favor.

Jim Walter Res., Inc. v. FMSHRC, 920 F.2d 738, 747-48 n.11 (11th Cir. 1990) (citations omitted) (footnotes omitted).

The scope of temporary reinstatement proceedings is narrow and limited to determining whether the evidence establishes that the complaint is nonfrivolous, not whether the complainant can establish a *prima facie* case of discrimination. *Sec'y of Labor on behalf of Saldivar v. Grimes Rock, Inc.*, 45 FMSHRC 912, 915 (Nov. 2023); *Sec'y of Labor on behalf of Price v. Jim Walter Res., Inc.*, 9 FMSHRC 1305, 1306 (Aug. 1987). During a temporary reinstatement proceeding, a judge does not make credibility determinations, resolve testimonial conflicts, or

weigh the operator's evidence against the Secretary's evidence. *Sec'y of Labor on behalf of Cook v. Rockwell Mining*, 43 FMSHRC 157, 162 (Apr. 2021). Rather, the judge simply evaluates the Secretary's evidence and determines whether the miner's complaint appears to have merit. *Id.* at 161 (citing *Sec'y of Labor on behalf of Williamson v. Cam Mining, LLC*, 31 FMSHRC 1085, 1089 (Oct. 2009)).

Although the Secretary need not prove a *prima facie* case of discrimination, the Commission has found it useful to review the elements of a discrimination claim to assess whether the evidence at the temporary reinstatement stage meets the nonfrivolous test. *Cook*, 43 FMSHRC at 161. To establish a *prima facie* case, a Complainant must establish that he engaged in a protected activity and suffered an adverse action because of the protected activity.[4] *Id.*; *Thomas v. CalPortland Co.*, 993 F.3d 1204, 1211 (9th Cir. 2021). Evidence that a causal nexus exists between the protected activity and the adverse action may be shown by circumstantial evidence, including the operator's knowledge of the protected activity, its temporal proximity to the adverse action, the operator's hostility or animus towards the miner regarding the protected activity, and disparate treatment of the miner. *See Sec'y on behalf of Hoover v. Moseneca Mfr. LLC d/b/a American Tripoli*, 46 FMSHRC 1, 3-4 (Jan. 2024).

V. Disposition

A. Protected Activity

The Secretary's Application identifies two instances of protected activity. Sec'y App. at 2. First, on April 8, Miranda requested a respirator from Dixon, and he was provided with a dust mask in response. Dixon Rock does not dispute this contention, but asserts that this is not protected activity because Miranda lacked a reasonable belief that he needed a respirator.[5] However, the record suggests that Miranda was subjected to work in a dusty environment, and casts his safety concern and request for PPE in a reasonable light. Tr. at 143, 199. Expressing concerns about the need for respiratory protection has been found to constitute protected activity. *See Sec'y of Labor on behalf of Shemwell v. Armstrong Coal Co*, 34 FMSHRC 1461, 1468, 1471 (June 2012) (ALJ), *aff'd* 34 FMSHRC 1580 (July 2012); *see also Sec'y of Labor on behalf of Bungard v. GMS Mine Repair & Maint.*, 38 FMSHRC 2664, 2676 (Oct. 2016) (ALJ) (request and subsequent actions to obtain a dust mask are protected activities).

Second, the Secretary contends that Miranda raised a safety concern on April 8 about performing manual labor at an unsafe speed around heavy machinery and falling rock. Sec'y

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[4] In cases subject to review by the Ninth Circuit, as in the instant matter, the term "because of" is construed to incorporate a "but-for" causation standard. *See CalPortland Co.*, 993 F.3d at1211; *see also Sec'y of Labor on behalf of Saldivar v. Grimes Rock, Inc.*, 43 FMSHRC 299, 302-303 (June 2021).

[5] Dixon Rock presented evidence that silica tests by MSHA on May 6 were compliant with applicable standards, and that MSHA's April 14 spot inspection of Dixon Rock's on-site PPE resulted in no citations. Tr. at 150-51; Ex. R-10.

Br. at 9. At hearing, Dixon Rock did not address that Miranda communicated this concern to Dixon, but instead, presented evidence suggesting that Miranda was prone to hiding when he should have been working. Accordingly, I find that the Secretary has established reasonable cause to believe that Miranda also complained about work pace expectations and, therefore, that he had engaged in two instances of protected activity.

B. Adverse Action

The Secretary has sufficiently established that Miranda suffered three adverse actions. First, the Secretary's evidence suggests that Dixon told Miranda to go home from work prematurely on April 8 on the heels of Miranda's safety complaints. Next, the Secretary's contention that Dixon made changes to Miranda's Workforce App schedule for the weeks of April 7 and April 14 is supported by the record. Lastly, given the contentious events that occurred over the three work weeks of Miranda's employment, the evidence is adequate to establish reasonable cause to believe that Miranda was terminated on April 15.

Dixon Rock's challenges to the alleged adverse actions, i.e., that there was no early dismissal; that Workforce App schedule changes were based on customer product demand only; and that Miranda voluntarily abandoned his job, cannot be addressed at this juncture, as they pose evidentiary disputes appropriately addressed in a proceeding on the merits of Miranda's discrimination claim. *See Cook*, 43 FMSHRC at 162 (a judge should not resolve testimonial conflicts or make credibility determinations in a temporary reinstatement decision). Consequently, I find that the Secretary has sufficiently demonstrated that Miranda suffered adverse actions, including termination of his employment.

C. Causal Nexus

The Secretary has sufficiently established a causal nexus between Miranda's protected activities and the adverse actions, as evidenced by Dixon Rock's knowledge, temporal proximity, and animus on the part of Dixon. Miranda made safety complaints directly to Dixon, the company's co-owner and manager, and the fact that a mere eight days passed between Miranda's protected activities and his ultimate separation from Dixon Rock establishes temporal proximity. Furthermore, Miranda's alleged early dismissal from work on April 8 occurred on the same day that he had raised safety complaints with Dixon, followed by his alleged termination only a week later. The temporal proximity, alone, between his protected activities and adverse actions, creates a reasonable inference of a discriminatory motive. The Secretary also provided evidence of Dixon's hostility towards Miranda, which can reasonably be attributed to Miranda's protected activities. Considering this circumstantial evidence, the Secretary has sufficiently established that the alleged causal nexus between Miranda's protected activities and the adverse actions is nonfrivolous. *See Id.* at 161 (operator's knowledge and temporal proximity can, by themselves, in the absence of evidence of alleged hostility, be sufficient to support a nonfrivolous motivational nexus).

In contending that there is no causal connection between any alleged protected activity and Miranda's separation from the company, Dixon Rock was permitted a full and fair opportunity to present testimonial and documentary evidence at hearing, consistent with the Commission's recognition that a temporary reinstatement hearing must be a full evidentiary

process that permits all relevant evidence relating to the adverse employment action. *Id.* at 165-66. However, "resolving conflicts in the testimony, and ma[king] credibility determinations in evaluating the Secretary's *prima facie* case" are simply inappropriate during a temporary reinstatement proceeding. *Williamson*, 31 FMSHRC at 1089 (citing *Sec'y of Labor on behalf of Albu v. Chicopee Coal Co.*, 21 FMSHRC 717, 719 (July 1999)). While Dixon Rock's evidence may be dispositive in a later discrimination proceeding, it serves the limited purpose in this proceeding of providing an alternative theory as to why Miranda's employment ended. *See, e.g., Sec'y of Labor on behalf of Billings v. Proppant Specialists, LLC*, 33 FMSHRC 2383, 2385 (Oct. 2011) (a judge is not required to consider respondent's evidence of alternative, non-discriminatory reasons for complainant's termination). Consequently, having concluded that the evidence presented by Dixon Rock clearly creates evidentiary conflicts and credibility issues that cannot be resolved here, Dixon Rock has not shown Miranda's Discrimination Complaint to be frivolous.

D. Conclusion

The documentary and testimonial evidence presented by the Secretary demonstrates that there is reasonable cause to believe that Miranda engaged in protected activities and suffered adverse employment actions, including termination, because of his protected activity. Inasmuch as the Secretary has established that Miranda's Discrimination Complaint appears to have merit and, therefore, was not frivolously brought, Miranda is entitled to temporary reinstatement, as provided by the Mine Act.

VI. Economic Temporary Reinstatement

In granting the Secretary's Application, I am obligated to restore Miranda to the full-time laborer position to which he was hired and occupied until his separation from employment, or to an equivalent position with similar duties at the same rate of pay and benefits. Dixon Rock has requested that Miranda be placed on economic temporary reinstatement, and that he be paid for only 20 hours of work per week, to reflect that he was never guaranteed a 40-hour work week. See Resp. Br. at 13. The evidence of record establishes that the mine's weekly operations and laborer work hours fluctuate according to customer product demand, and that Miranda had averaged less than 40 hours per week over the course of his employment. Tr. 169, 193; Ex. R-8.

In *Gray v. North Fork Coal*, the Commission cautioned that "Commission judges do not decide the terms of economic reinstatement agreements," and reasoned that, if the operator wanted a specific term in the economic temporary reinstatement, it should have negotiated it as part of its agreement rather than request the Commission to modify the agreement. *Sec'y of Labor on behalf of Gray v. North Fork Coal Corp.*, 33 FMSHRC 589, 592-93 (Mar. 2011). Multiple Commission judges have interpreted *Gray* "to severely limit the ability of a judge to order economic reinstatement without a clear agreement between the parties." *See Sec'y of Labor on behalf of Terry v. Prospect Mining & Development Co.*, 41 FMSHRC 142, 146 (Feb. 2019) (ALJ); *see also Sec'y of Labor on behalf of Garcia v. Veris Gold U.S.A.*, 36 FMSHRC 1883, 1894 (July 2014) (ALJ) ("this Court does not have the authority to order economic reinstatement without the prior express agreement of both the miner and the operator"); *Sec'y of Labor on behalf of Wilder v. Private Investigation & Counter Intelligence Services, Inc.*, 33

FMSHRC 2031, 2032 (Apr. 2011) (ALJ) (the operator could not unilaterally decide to economically reinstate complainant where temporary reinstatement had already been granted, and there was no negotiated agreement on terms of economic temporary reinstatement). Consequently, economic temporary reinstatement is only a viable option available to Dixon Rock should the Secretary agree and the parties reach an agreement as to its terms, including Miranda's weekly wages. In the absence of such an agreement, I am constrained to order Dixon Rock to temporarily reinstate Miranda by returning him to work at the mine, under its normal operating conditions.

VII. Order

WHEREFORE, the Secretary's Application for Temporary Reinstatement is **GRANTED**, and it is **ORDERED** that Dixon Rock and Materials, LLC **TEMPORARILY REINSTATE CAESAR MIRANDA** to the full-time position of laborer**,** or to an equivalent position, at the same rate of pay and benefits, and subject to the mine's normal fluctuating workforce requirements, **EFFECTIVE IMMEDIATELY.** Should the parties subsequently reach an agreement on the terms to economically temporarily reinstate Miranda, they may jointly file a motion to modify this Order.

THIS ORDER SHALL REMAIN IN EFFECT until such time as a final determination on Caesar Miranda's Discrimination Complaint is rendered, by a decision on the merits or other order of the undersigned or the Commission.

I RETAIN JURISDICTION OVER THIS TEMPORARY REINSTATEMENT PROCEEDING. 29 C.F.R. § 2700.45(e)(4). Counsel for the Secretary shall promptly notify the undersigned of any settlement or determination on filing Miranda's Discrimination Complaint with the Commission.

Jacqueline R. Bulluck
Administrative Law Judge

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