FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 11, 2021

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), on behalf of BRANDON HALL, Complainant, v. WARRIOR MET COAL COMPANY, LLC, Respondent	TEMPORARY REINSTATEMENT PROCEEDING Docket No. SE 2021-0118 MSHA Case No.: SE-MD 2021-01 Mine: No. 7 Mine Mine ID: 01-01401

ORDER GRANTING TEMPORARY REINSTATEMENT OF BRANDON HALL

Before: Judge Sullivan

Pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 ("Act"), 30 U.S.C. §801, *et. seq.*, and 29 C.F.R. §2700.45, on April 30, 2021, the Secretary of Labor ("Secretary") filed an Application for Temporary Reinstatement of miner Brandon Hall ("Complainant") to his former position as a longwall operator with Warrior Met Coal Company, LLC ("Respondent") at its Mine No. 7. Here, the Secretary's application satisfies the procedural requirements of Commission Procedural Rule 45(b), as, among other things, it timely "states the Secretary's finding that the miner's discrimination complaint was not frivolously brought[,] accompanied by an affidavit setting forth the Secretary's reasons supporting his finding[,] and includes a copy of the miner's complaint to the Secretary . . ." 29 C.F.R. §2700.45(b).[1]

According to Commission Rule 45(c), a request for hearing must be filed within 10 days following receipt of the Secretary's application for temporary reinstatement. 29 C.F.R. §2700.45(c). The application's certificate of service states that it was served on Respondent by electronic mail on April 30. On May 10, 2021, Respondent contacted the Court and stated that it does not intend to request a hearing on temporary reinstatement. Consequently, I review the contents of the Secretary's application to determine whether the complaint in this instance "was not frivolously brought." *Id.*

Section 105(c)(1) of the Mine Act provides that "[n]o person shall discharge . . . any miner . . . because such miner . . . has filed or made a complaint under or related to this Act,

[1] The Discrimination Complaint ("Complaint") filed with the Secretary's Mine Safety and Health Administration by the Complainant is dated March 24, 2021. It was filed within 60 days of the Complainant's March 15 termination of employment. Section 105(c)(3) directs the Secretary to determine whether a section 105(c) violation occurred within 90 days, which in this instance would be no later than June 22, 2021.

including a complaint notifying the operator . . . of an alleged danger or safety or health violation in a . . . mine . . . ." 30 U.S.C. § 815(c)(1). In his Application, as supported by his investigator's affidavit, the Secretary alleges the following to establish the Complaint as having been not frivolously brought under section 105(c)(1) & (2):

(1) During his January 25, 2021 shift, the Complainant raised with Respondent's agents a number of safety issues with respect to the operation of the longwall that day, such as the lack of a required fire extinguisher, shearer bits that needed to be replaced, elevated methane levels, and thick gob in the pathway of the section where he worked. The foregoing adversely impacted the progress of the longwall shearer during the shift;

(2) Respondent's agents subsequently reacted negatively to the speed at which the Complainant was working throughout the shift; and

(3) At the end of the shift, Complainant was suspended for five days, with intent to discharge, for having "stopp[ed] coal production." That punishment was later reduced to a two-week suspension to be followed by a 30-working day probationary period. After returning to work on February 8, 2021, Complainant, on March 15, 2021 (thus apparently prior to the end of his probation), was fired for failing, at the end of a shift, to follow orders and personally clean a bus he and two other miners had been using.

There being no opposition to the Application, I agree with the Secretary that it establishes the Complaint to have been "not frivolously brought" in this instance. *See Jim Walters Res., Inc. v. FMSHRC*, 920 F.2d 738, 747 (11th Cir. 1990) (in light of Mine Act legislative history and the Supreme Court's treatment of a similar whistleblower protection provision, interpreting the "not frivolously brought" standard to be the equivalent of a "reasonable cause to believe" standard and to be met when a miner's "complaint appears to have merit"). Accordingly, the Application is granted. I reach no conclusion beyond that regarding the merits of the Complaint.

ORDER

It is hereby **ORDERED** that **BRANDON HALL** be **immediately TEMPORARILY REINSTATED** to his former job at his former rate of pay, overtime, and all benefits he was receiving at the time of his termination.

This Order **SHALL** remain in effect until such time as there is a final determination in this matter by hearing and decision, approval of settlement, or other order of this court or the Commission.

I retain jurisdiction over this temporary reinstatement proceeding. 29 C.F.R. § 2700.45(e)(4). Given that that the Mine Act directs that both the Secretary and the Commission act expeditiously in section 105(c) proceedings, the Secretary **SHALL** provide a report on the status of the underlying discrimination complaint **as soon as possible**. Counsel for the

Secretary **SHALL** also **immediately** notify my office of any settlement or of any determination that the Respondent did not violate Section 105(c) of the Act.

John T. Sullivan
Administrative Law Judge

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