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EEOC v. River View Coal, LLC

Judge Joseph H. McKinley Jr.

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EEOC v. River View Coal, LLC

Keywords

EEOC v. River View Coal LLC, 4:11-cv-00117-JHM-HBB, Race, African American or Black, Terms and Conditions of Employment, Disparate Treatment

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION**

FILED ELECTRONICALLY

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION)	
)	
PLAINTIFF)	
)	
v.)	No. 4:11-cv-00117-JHM-HBB
)	
RIVER VIEW COAL, LLC)	
)	
DEFENDANT.)	
)	

CONSENT DECREE

Civil Action No. 4:11-cv-00117-JHM-HBB was instituted by the Equal Employment Opportunity Commission (“EEOC”) under the authority granted to it under Section 703(a)(1) of Title VII of the Civil Rights Act of 1964 (“Title VII”) and Section 102 of the Civil Rights Act of 1991. The EEOC filed this action against Defendant, River View Coal, LLC (“River View”) alleging that River View engaged in race discrimination at its Waverly, Kentucky facility against a class of African-American mining applicants. The EEOC brought this action to correct River View’s alleged unlawful employment practices.

The parties have advised the Court that they desire to resolve the allegations in the Amended Complaint without the burden, expense and delay of further litigation. This Decree does not constitute an adjudication on the merits of the EEOC’s case. Nothing in this Decree is intended to be an admission of liability by River View, and River View denies any violation of applicable laws.

The EEOC and River View stipulate to satisfaction of all administrative prerequisites and the jurisdiction of the Court for the purposes of approving this Decree.

It is therefore the finding of this Court, based on the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of Title VII will be promoted and effectuated by the entry of this Consent Decree; and (3) this Consent Decree resolves all the matters in controversy between the parties as provided in paragraphs 1 through 30 below.

It is therefore ORDERED, ADJUDGED AND DECREED as follows:

Non-Monetary Agreements

1. River View, its officers, managers and employees shall not violate Title VII by:
 - a. unlawfully discriminating against any employee or applicant for employment because of his or her race;
 - b. engaging in any act that has the purpose or effect of unlawfully discriminating against any employee or applicant for employment on the basis of race; or
 - c. unlawfully retaliating in any *way* against any person because of his or her complaints of discrimination, or because he or she opposed any practice made an unlawful employment practice by Title VII, or because he or she opposed a practice which he or she reasonably believed to be unlawful under Title VII, or because he or she filed a Charge of Discrimination with the EEOC and/or any local, state or federal fair employment practices agency, or provided testimony or evidence related to this lawsuit or to the investigation of an EEOC Charge of Discrimination.

2. Within five (5) business days after River View has received copies of an executed release and original W-4 forms properly completed and signed from no fewer than sixteen (16) Claimants (as discussed, *infra*, at paragraph 18), River View shall post in conspicuous areas accessible to all employees at its Waverly, KY facility the Notice attached as Exhibit A. The Notice must remain posted throughout the duration of this Decree.

3. River View shall maintain a written anti-discrimination policy that helps ensure a workplace free from unlawful race discrimination, and that provides procedures for applicants for employment and employees to raise concerns or complaints about alleged unlawful race discrimination.

4. Annually, for two (2) years from the entry of this Decree, River View shall provide Equal Employment Opportunity training to all hiring decision makers and any other employees who are involved in the employment selection and hiring process, which training shall address, but not be limited to, accepting and processing applications and/or conducting interviews. The initial training shall be completed within three (3) months from the date the Consent Decree is entered. Such training may be provided electronically or through a webinar format provided attendees have the opportunity to ask questions. River View shall submit to the EEOC each year, at least thirty (30) days in advance of the training program, the name of the program provider and a curriculum outline indicating the information to be addressed during the program and copies of all agendas and materials to be distributed at the program. The person(s) who shall administer the training will be experienced in and knowledgeable about EEO matters including Title VII, the training must last at least one (1) hour, and it must include instruction regarding non-discriminatory screening, interviewing and hiring procedures.

5. River View shall endeavor to increase its racial diversity in the workforce by advertising all open underground positions available throughout the duration of this Decree with the Marion, IL Employment Service office, the Harrisburg, IL WorkNet office and the unemployment offices that serve: Union County, KY and Vanderburgh County, IN. All such advertisements shall state that River View is an Equal Employment Opportunity employer and that it does not discriminate on the basis of race, for any position.

Reporting and Monitoring

6. During the term of this Decree, River View shall provide the EEOC with annual reports on or before each anniversary date of the entry of this Decree. The written reports shall contain the following information:

- a. Information about any race discrimination complaints made by applicants or employees in underground positions, specifying the name, race and contact information of the complaining party, the date of the complaint, to whom it was made, and how it was resolved;
- b. The number of Caucasian, African-American and other minority applicants and hires for underground positions;
- c. That the Notice was and has remained posted as required by this Decree.
- d. If not previously provided in accordance with paragraph 4 above, the date of training(s) during the preceding year, a copy of the agenda of the training session, the identity of the person or persons leading the training, and a certification that all required employees attended the training.

7. Except as provided otherwise, River View shall submit the information required under this Decree to:

Laurie A. Young, Regional Attorney
Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis, IN 46204

8. To the extent deemed necessary by the EEOC, and with prior notice to River View's counsel, throughout the duration of this Decree, the EEOC may request information from River View which demonstrates compliance with the Decree and/or which clarifies information provided in any report made pursuant to paragraph 6 above. River View shall comply with such a request within thirty (30) days of the request.

Monetary Agreements

9. River View shall pay Two Hundred Forty-five Thousand Dollars (\$245,000), to be distributed, at the discretion of the EEOC, among eleven (11) applicant Charging Parties and eight (8) Class Members (the Charging Parties and Class Members are hereinafter referred to collectively as “Claimants”). Of the total monetary payments, Eighty-two Thousand Dollars (\$82,000) shall be treated for tax purposes as back pay and One Hundred Sixty-three Thousand Dollars (\$163,000) shall be treated for tax purposes as compensatory damages. River View shall not have any participation or role in determining the specific amount payable to each Claimant.

10. Within sixty (60) days of the entry of the Decree, the EEOC shall file with the Court a proposed distribution, itemizing the amount of the payment for each Claimant. The Court will then issue a Notice of Proposed Distribution (“Distribution Notice”) which will state 1) the total amount of the monetary payment to be distributed; 2) the projected number of Claimants who will share in the distribution (which will be 19); 3) a statement that before the distribution is final, Claimants will be given the opportunity to make an objection to the distribution; and 4) an explanation of eligibility/ineligibility to participate in the distribution, as determined by the EEOC. The EEOC will send, via U.S. mail, a copy of the Distribution Notice to each Claimant at his or her last known address. If any Distribution Notices are returned as undeliverable, the EEOC will attempt to find a more current address for those individuals via an Accurint search. If a more current address is found, the EEOC will re-mail each such Distribution Notice to the current address.

11. Claimants may submit to the Court letters indicating any disagreement with the proposed distribution, including any disagreement he or she might have with the size of any payment. Claimants will be instructed, via the Distribution Notice, of the address to which such

letters may be mailed. This procedure will be the sole means by which individuals may challenge the proposed distribution under this Consent Decree.

12. If no letters of disagreement are submitted to the Court within thirty (30) days of the EEOC's last mailing of the Notice of Proposed Distribution, the Court will issue a Final Order of Distribution.

13. If a letter of disagreement is submitted to the Court within thirty (30) days of the EEOC's last mailing of the Notice of Proposed Distribution, the Court will schedule a fairness hearing. The Court will serve notice of the fairness hearing on the parties and any individuals who have submitted a letter of disagreement to the Court. At the fairness hearing, individuals who have submitted letter objections will have an opportunity to be heard. At the conclusion of the fairness hearing, the Court will render any appropriate rulings, including a Final Order of Distribution.

14. Within five (5) business days of the Final Order of Distribution, the EEOC shall notify River View of the amounts to be paid to each Claimant, the amounts attributable for tax purposes to back pay and compensatory damages and the current address for each Claimant who will receive a payment and shall forthwith obtain from Claimants, and provide to River View, completed W-4 forms for each Claimant. River View shall not deduct from the total monetary payment the amount of the employer's share of any costs, taxes or Social Security required by law to be paid by River View. River View shall be responsible for paying its share of all applicable payroll taxes for the portion of the settlement fund deemed back wages. River View will issue a W-2 for any payment that is deemed back wages (which W-2s will be issued when River View issues W-2s to its employees for compensation paid them during the period in which the amounts are paid). All withholding required by law, including an employee's share of all applicable taxes, shall be deducted from the amount deemed back wages. No deductions shall be made from

payments deemed compensatory damages. River View further will issue a form 1099 for the amounts that have been deemed compensatory damages for tax purposes. Payment checks shall be accompanied by a statement detailing all deductions.

15. Within five (5) business days of the Final Order of Distribution, the EEOC will forward a release to each Claimant for his or her execution, in the form attached as Exhibit B. The EEOC will promptly transmit to counsel for River View a PDF copy of each executed release received.

16. Should any Claimant refuse to sign a release for any reason other than the fact that he or she cannot be located or is deceased, that Claimant's payment shall be redistributed on a pro-rata basis to the other Claimants.

17. The execution of this Decree and all obligations contained therein are contingent and conditioned upon the execution of a release (Exhibit B) by no fewer than sixteen (16) Claimants within sixty (60) days of the Court's entry of a Final Order of Distribution. If fewer than sixteen (16) Claimants execute and return a release within sixty (60) days of the Court's entry of a Final Order of Distribution, this Consent Decree will be null and void. If this Consent Decree is null and void pursuant to the preceding sentence, the parties will resume active litigation of this matter and jointly move this Court to extend the discovery schedule (and other deadlines, as appropriate) by the number of days that accrued between the Settlement Conference (May 30, 2013) and the date which is ninety (90) days from the Court's entry of a Final Order of Distribution.

18. Within (5) business days after River View has received copies of an executed release and original W-4 forms properly completed and signed from no fewer than sixteen (16) Claimants, River View shall mail the settlement checks to each Claimant as specified by the EEOC and to the address provided by the EEOC.

19. River View shall mail a copy of the checks and proof of delivery to each Claimant (a signed certified mail receipt) to the EEOC as follows:

Laurie A. Young, Regional Attorney
Equal Employment Opportunity Commission
101 West Ohio Street, Suite 1900
Indianapolis, IN 46204

20. Within ten (10) business days of receiving proof of delivery to each Claimant, the EEOC shall forward the original release of that Claimant to counsel for River View.

21. In the event that any Claimant who is identified to receive a payment has a check returned as undeliverable, River View shall notify the EEOC and the EEOC will make all reasonable efforts to locate such person, including conducting an Accurant search. If such person cannot be located, any payment for such person shall be divided pro-rata for the benefit of the Claimants receiving payments, as reasonably directed by the EEOC.

Dispute Resolution and Enforcement Procedures

22. At the request of counsel for EEOC or River View, the parties shall use best efforts to resolve promptly any differences or any disputes regarding the interpretation or implementation of the Consent Decree.

23. The EEOC or River View shall have the right to initiate steps to resolve any dispute or issue of compliance regarding any provision of this Consent Decree subject to limitations and standards set forth herein.

a. Nothing contained in this Consent Decree shall prohibit the EEOC from accepting and/or processing Charges of Discrimination filed by or on behalf of any individuals against River View, including any Charge which alleges conduct which could be construed as a violation of paragraphs 1(a), (b) and/or (c) of this Decree. If the EEOC investigates such a Charge, issues a Cause Determination, and Conciliation is unsuccessful, the EEOC may move to

enforce the Decree if it so chooses. However, if it so moves it shall not seek to hold River View in contempt for any such alleged discrimination or retaliation.

b. If the EEOC believes during the two (2) year term of this Consent Decree that River View has violated any term of this Decree as stated herein at paragraphs 2-30, it may move, subject to compliance with parts c-f of this paragraph 23, to enforce the Decree with this Court. In so moving, it may seek sanctions, and/or a contempt order, if necessary.

c. If Counsel for the EEOC or River View has good reason to believe that a legitimate dispute exists, the initiating party shall first promptly give written notice to the other parties, including: (a) a reference to all specific provisions of the Consent Decree that are involved; (b) a statement of the issue; (c) a statement of the remedial action sought by the initiating party; and (d) a brief statement of the specific facts, circumstances and any other arguments supporting the position of the initiating party;

d. Within fifteen (15) days after receiving such notice, the non-initiating party shall respond in writing to the statement of facts and arguments set forth in the notice and shall provide its written position, including the facts and arguments upon which it relies in support of its position;

e. Counsel for the EEOC and River View shall undertake good-faith negotiations, including meeting or conferring by telephone or in person and exchanging relevant documents and/or other information, to attempt to resolve the issues in dispute or alleged noncompliance;

f. If the parties' good-faith efforts to resolve the matter have failed, and after written notice of any impasse by the moving party to the non-initiating party or parties, counsel for the EEOC or River View may file a motion, subject to the limitations in parts a and b of this

paragraph 23, with the Court, with a supporting brief, requesting resolution of the dispute or the issues of non-compliance, provided, however, that such a motion shall be limited to the dispute(s) and/or issue(s) as to which the parties have met and conferred;

g. The non-moving parties will have fifteen (15) days to respond to any such motion.

24. The provisions of this Section do not prevent the EEOC or River View from promptly bringing an issue directly before the Court when exigent facts or circumstances require immediate Court action to prevent a serious violation of the terms of this Consent Decree, which otherwise would be without meaningful remedy. The moving papers shall explain the facts and circumstances that allegedly necessitate immediate action by the Court.

25. Only the EEOC or River View shall have standing to move the Court to enforce, apply, or modify this Decree. Any individual concerned about River View's compliance with this Decree may so notify counsel for the EEOC and request that they examine River View's compliance and seek such relief, if any, as may be appropriate.

Miscellaneous

26. This Decree shall remain in effect for two (2) years from the date of signing.

27. This Court shall retain jurisdiction of this cause for purposes of compliance with this Decree.

28. The EEOC may petition this Court for compliance with this Decree at any time during which this Court maintains jurisdiction over this action. Should the Court determine that River View has not complied with this Decree, appropriate relief, including extension of this Decree for such period as may be necessary to remedy its non-compliance, may be ordered.

29. This Consent Decree shall be binding on River View's Waverly, Kentucky facility and all of its successors-in-interest and River View will notify all such successors-in-interest of the existence and terms of this Consent Decree.

30. Each party to this action shall bear its own costs and attorney's fees.


Joseph H. McKinley, Jr., Chief Judge
United States District Court

July 24, 2013



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Indianapolis District Office**

101 West Ohio Street, Suite 1900
Indianapolis, IN 46204-4203
Indianapolis Status Line: (866) 408-
8075 Indianapolis Direct Dial: (317)
226-5669 TTY (317) 226-5162 FAX
(317) 226-7953 & 5571

EXHIBIT A

NOTICE TO THE EMPLOYEES OF RIVER VIEW COAL

**THIS NOTICE IS POSTED PURSUANT TO A CONSENT DECREE ENTERED INTO
BETWEEN THE EEOC AND RIVER VIEW COAL.**

1. Federal law requires that there be no discrimination against any employee or applicant for employment because of the employee's race, color, religion, national origin, sex, including pregnancy or pregnancy related condition, age or disability with respect to compensation, hiring or other terms, conditions or privileges of employment.
2. River View supports and will comply with such Federal law in all respects and will not take any action against employees or applicants for employment because they have exercised their rights under the law by filing charges with the Equal Employment Opportunity Commission (EEOC), providing information to the EEOC, and/or receiving compensation for the settlement of any employment discrimination claim.
3. An employee and any applicant for employment has the right, and is encouraged to exercise that right, to report allegations of employment discrimination in the workplace. An employee or applicant may contact the U. S. Equal Employment Opportunity Commission for the purpose of filing a charge of employment discrimination.
4. Nothing in this Notice is intended to be an admission of any act of discrimination or liability by River View Coal, and, in fact, River View Coal expressly denies any such discrimination or liability.

SIGNED this ____ day of _____, 2013.

Heath Lovell
Vice President

This OFFICIAL NOTICE shall remain posted for two full years from date of signing.

Questions concerning this notice may be addressed to:

**Equal Employment Opportunity Commission
101 W. Ohio St., Suite 1900
Indianapolis, Indiana 46204-4203
Telephone: (317) 226-7212
TDD (317) 226-4162**

EXHIBIT B

RELEASE

In consideration of the payment to me by _____ of
\$ _____ and in consideration of the Consent Decree agreed to by the Equal
Employment Opportunity Commission and _____ in
Civil Action No. 4:11-cv-00117-JHM-HBB, entered by the Court on the _____ day of
_____, 2013, of which this Release is a part, I, _____, hereby
fully and forever release and discharge _____, its successors and assigns,
including its present and former directors, officers, employees and agents, from any claim or
obligation based on the allegation that I was not hired by River View because of my race,
African-American, in violation of Title VII of the Civil Rights Act of 1964, as amended, and as
raised in Civil Action No. 4:11-cv-00117-JHM-HBB.

I further waive my right to recover for any claims of employment discrimination arising
under Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act of
1990, as amended, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of
1967, the Genetic Information Nondiscrimination Act of 2008, and any Kentucky state anti-
discrimination law equivalent that I may have had against River View prior to the date of this
Release.

I have read this Release and I execute it voluntarily, without coercion or threat of reprisal.

IN WITNESS WHEREOF, this Release is signed and executed by me on the
_____ day of _____, 2013.
