

FILED: April 23, 2019

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUITNo. 19-1285, NLRB v. Cobalt Coal Corp. Mining, Inc.  
09-CA-092229,09-CA-095354, 09-CA-096073

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NOTICE OF JUDGMENT

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Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

**PETITION FOR WRIT OF CERTIORARI:** To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons.

([www.supremecourt.gov](http://www.supremecourt.gov))

**VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED**

**COUNSEL:** Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov), or from the clerk's office.

**BILL OF COSTS:** A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

**PETITION FOR REHEARING AND PETITION FOR REHEARING EN**

**BANC:** A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

**MANDATE:** In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

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UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 19-1285  
(09-CA-092229)  
(09-CA-095354)  
(09-CA-096073)

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NATIONAL LABOR RELATIONS BOARD

Petitioner - Appellant

v.

COBALT COAL CORP. MINING, INC

Respondent

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J U D G M E N T

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The Board's proposed judgment and order are attached hereto and are adopted as the judgment of this court enforcing an order of the National Labor Relations Board.

The court's mandate shall issue forthwith.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case Nos.:
COBALT COAL CORP. MINING, INC.	:	09-CA-092229
	:	09-CA-095354
Respondent	:	09-CA-096073

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Cobalt Coal Corp. Mining, Inc., its officers, agents, successors, and assigns, enforcing its order dated December 18, 2018, in Case Nos. 09-CA-092229, 09-CA-095354 and 9-CA-96073, reported at 367 NLRB No. 45 (Dec. 18, 2018), and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Cobalt Coal Corp. Mining, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

## NATIONAL LABOR RELATIONS BOARD

v.

COBALT COAL CORP. MINING, INC.

**ORDER**

Cobalt Coal Corp. Mining, Inc., Premier and Hensley, West Virginia, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

- (a) Creating the impression that it is engaged in surveillance of its employees' union or other protected concerted activities.
- (b) Coercively interrogating employees about their or their coworkers' union activities, sympathies, or support.
- (c) Threatening employees with closure of the mine if they select the Union as their collective-bargaining representative.
- (d) Telling employees that they are being sent home prior to the completion of their work shift because the employees selected the Union as their collective-bargaining representative.
- (e) Refusing to recall and/or assign work to employees because the employees formed, joined, or assisted the Union, or engaged in protected concerted activities, and to discourage employees from engaging in these activities.
- (f) Sending home employees prior to the completion of their work shift because the employees formed, joined, or assisted the Union, or engaged in protected concerted activities, and to discourage employees from engaging in these activities.
- (g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Make whole the following employees for any loss of earnings and other benefits suffered as a result of the discrimination against them, by paying them the amounts opposite their names, plus interest accrued to

the date of payment and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this Decision:

Johnny Simms	\$ 1600
Bruce Blankenship	\$ 120
Eddie Branch	\$ 130
Fred Coleman	\$ 104
William Mullins	\$ 100
Danny Smith	\$ 130
TOTAL BACKPAY:	\$ 2184

- (b) Compensate Simms, Blankenship, Branch, Coleman, Mullins, and Smith for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 9, within 21 days from the date of this Order, a report allocating the backpay awards to the appropriate calendar years for each employee.
- (c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to recall and/or assign work to Simms and the unlawful sending home of Blankenship, Branch, Coleman, Mullins, and Smith prior to the completion of their work shift, and within 3 days thereafter, notify them in writing that this has been done and that the refusal to recall and/or assign work and sending home prior to the completion of their work shift will not be used against them in any way.
- (d) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix" to the Union and to all employees who were employed by the Respondent at any time since September 24, 2012. In addition to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.
- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

**NOTICE TO EMPLOYEES**

MAILED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT create the impression among our employees that your union activities are under surveillance.

WE WILL NOT interrogate you about your or your coworkers' union activities, sympathies, or support.

WE WILL NOT threaten you with closure of the mine if you select the Union as your collective-bargaining representative.

WE WILL NOT tell you that you are being sent home prior to the completion of your work shift because you selected the Union as your collective-bargaining representative.

WE WILL NOT refuse to recall and/or assign work to you because you formed, joined, or assisted the Union, or engaged in protected concerted activities.

WE WILL NOT send you home prior to the completion of your work shift because you formed, joined, or assisted the Union, or engaged in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make whole employees Johnny Simms, Bruce Blankenship, Eddie Branch, Fred Coleman, William Mullins, and Danny Smith for any loss of earnings

and other benefits suffered as a result of our unlawful discrimination against them, paying them the amounts set forth in the Board's Order, plus interest.

WE WILL compensate employees Johnny Simms, Bruce Blankenship, Eddie Branch, Fred Coleman, William Mullins, and Danny Smith for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 9, within 21 days of the date of the Board's Order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful refusal to recall and/or assign work to Johnny Simms and the unlawful sending home of Bruce Blankenship, Eddie Branch, Fred Coleman, William Mullins, and Danny Smith prior to the completion of their work shift, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the refusal to recall and/or assign work and sending them home prior to the completion of their work shift will not be used against them in any way.

#### COBALT COAL CORP. MINING, INC.

The Board's decision can be found at <http://www.nlr.gov/case/09-CA-092229> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

