



In the Matter of

ROBERT ACKERMAN
Complainant

v.

MOUNT LEVELS ORCHARDS AND
HOMER FELLER
Respondents

Case No. 82-TAE-00003

and

LUCIUS DONALDSON ;
Complainant

TRI-COUNTY LABOR CAMP, INC. AND
RUSSELL PITZER
Respondents

EDWARD GIGNAC
Complainant

v.

TRI-COUNTY LABOR CAMP, INC. AND
RUSSELL PITZER
Respondents

SUPPLEMENTAL DECISION AND ORDER

In my decision dated May 5, 1983, I found that Respondents, Mount Levels Orchards and Mr. Homer Feller, violated their written assurances made in connection with their application for temporary labor certification, I concluded however that because of the plain language in 20 C.F.R. §658.401(a)(1) I have no authority to award monetary damages to Complaint, Mr. Robert Ackerman. The second paragraph of my order enumerated the sanction against Respondents, Mount Level Orchards and Mr. Homer Feller.

A letter dated May 27, 1983 from the Regional Solicitor of the U.S. Department of Labor

requests that the second paragraph of the order be amended to read, "Respondents are notified that they will not be eligible to apply for a temporary labor certification in the coming year." The Regional Solicitor states that the amended sanction is the only one available in view of the plain language in 20 C.F.R. §655.210(b). In opposition to this request, I have received a letter dated June 3, 1983 from Respondents' counsel and his reasons are fully stated in the letter.

20 C.F.R. §658.423(a)(4) makes it clear that the Administrative Law Judge in this case has no "jurisdiction to consider the validity and constitutionality of ES regulations or Federal statutes under which they are promulgated". It was based on this precept and the plain language in 20 C.F.R. §658.401 (a)(1) that I concluded I have no authority to award monetary damages to Mr. Ackerman. Likewise, based on the plain language in 20 C.F.R. §655.210(a), I must amend the second paragraph of my order dated May 5, 1983 to read: "Respondents, Mount Levels Orchards and Mr. Homer Fuller, are notified that they will not be eligible for a temporary labor certification in the coming year."

VICTOR J. CHAO
Administrative Law Judge

Dated: JUL 18 1983
Washington, D.C.

VJC:crg