

CCASE:  
SOL (MSHA) V. ALLIED CHEMICAL  
DDATE:  
19830125  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
ON BEHALF OF  
ARNOLD J. SPARKS, JR.,  
COMPLAINANT

Complaint of Discharge,  
Discrimination, or  
Interference  
  
Docket No. WEVA 79-148-D  
  
Shannon Branch Coal Mine

v.

ALLIED CHEMICAL CORPORATION,  
RESPONDENT

ORDER REINSTATING DECISION AND ORDER  
OF SEPTEMBER 27, 1979

On May 20, 1982, the Commission remanded the captioned matter for "further proceedings consistent with the court's decision" in *UMWA v. FMSHRC*, 671 F.2d 615 (D.C. Cir. 1982), cert. denied October 12, 1982, \_\_\_ U.S. \_\_\_.

Accordingly, on July 1, 1982, the trial judge issued an order to show cause why his decision and order of September 27, 1979 should not be reinstated.

Counsel for the Secretary responded saying he had no objection to reinstatement of my finding of discrimination in Allied's refusal to pay walkaround compensation. 1 FMSHRC 1451 (1979). Counsel for the operator suggested reinstatement be stayed pending disposition of a petition for certiorari in *Helen Mining et. al.* The petition for certiorari was denied on October 12, 1982.

In the meantime the American Electric Power Company through its coal subsidiaries filed contests designed to provoke relitigation of the issue of the applicability of section 103(f) to "spot" inspections. Under settled principles of issue preclusion, however, and by the specific terms of the Commission's order of remand, relitigation of the issue in these matters is foreclosed.

The record shows that while its appeal was pending counsel for Allied assured the Commission that all but paragraphs 1, 2 and 6 of my order of September 27, 1979, had been obeyed. Accordingly, it is

~165

ORDERED that in compliance with the order of remand paragraphs 1, 2 and 6 of my order of September 27, 1979, be, and hereby are, REINSTATED and the operator pay a penalty of \$100 on or before Friday, February 11, 1983.

Joseph B. Kennedy  
Administrative Law Judge