CCASE:
SOL (MSHA) V. DRAVO BASIC MATERIALS
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,	DISCRIMINATION PROCEEDING
MINE SAFETY AND HEALTH	
ADMINISTRATION (MSHA),	Docket No. SE 90-63-DM
ON BEHALF OF ALONZO WALKER,	MD 90-03
COMPLAINANT	
	R & S Material
v.	
DRAVO BASIC MATERIALS	
COMPANY, INC.,	
RESPONDENT	

DECISION

Appearances: William Lawson, Esq., Office of the Solicitor,
U.S. Department of Labor, Birmingham, AL,
for the Secretary,

R. Henry Moore, Esq., Buchanan Ingersoll
Professional Corporation, Pittsburgh, PA,
for the Respondent.

Before: Judge Fauver

On April 24, 1990, a hearing was held on the Secretary's
Application for Temporary Reinstatement under 105(c) of the
Federal Mine Safety and Health Act of 1977, 30 C.F.R. 801 et
seq.

Following oral argument, a decision was entered from the
bench. This decision confirms the bench decision.

I find that the evidence establishes a prima facie case of a
successor-in-interest relationship between R & S Materials, Inc.,
(predecessor) and Dravo Basic Materials Company, Inc.,
(successor).

The hearing evidence satisfies the Secretary's burden of
showing that the complaint by Alonzo Walker was not frivously
brought. This finding is made without ruling in any way on the
merits of the case.

ORDER

WHEREFORE IT IS ORDERED that, pending a final decision on the complaint of discrimination, Respondent, Dravo Basic Materials Company, Inc., shall immediately reinstate Alonzo Walker to the position he held at subject mine immediately before his discharge on January 10, 1990, or to a similar position, at the same rate and overtime pay, shift assignment, and with such other employment benefits that he would be receiving had he not been discharged. Provided: the parties may agree to an economic reinstatement (pay without physical reemployment) if they file a signed agreement to such reinstatement with the signed consent of Alonzo Walker.

William Fauver
Administrative Law Judge