

CCASE:  
SOL (MSHA) v. F.K.C., INC.,  
DDATE:  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
The Federal Building  
Room 280, 1244 Speer Boulevard  
Denver, CO 80204

SECRETARY OF LABOR,  
ON BEHALF OF  
MARTIN L. RICHARDSON,  
COMPLAINANT

v.

F.K.C., INC.,  
RESPONDENT

DISCRIMINATION PROCEEDING

Docket No. WEST 91-143-DM

MD 90-19

Mine I.D. No. 26-02161

ORDER OF TEMPORARY REINSTATEMENT

The Secretary of Labor has applied for an order temporarily reinstating Applicant Martin L. Richardson to his former position with Respondent.

The file reflects that on December 26, 1990, Respondent was served, by express mail, with a copy of the Secretary's application for temporary reinstatement.

Respondent has not requested a hearing on the Secretary's application and more than 10 days has elapsed since Respondent received the application.

Since no hearing has been requested, the Judge, pursuant to Section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., and Commission Rule 44, 28 C.F.R. 2700.44 as amended [51 F.R. 16033 (1986)] is required to immediately review the Secretary's application.

On the basis of the contents of the file, if the Judge determines that the miner's complaint is not frivolously brought, he shall issue an order of temporary reinstatement.

The file herein includes an Affidavit indicating Respondent did business and operated facilities in the production of sand and gravel and is, therefore, an operator within the meaning of Section 3(d) of the Mine Act.

The Affidavit further states as follows:

At all times relevant, Applicant Martin L. Richardson was employed by F.K.C. as water haul truck operator at F.K.C.'s pit and was a miner, as defined by Section 3(g) of the Mine Act.

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On August 8, 1990, an MSHA inspector was on the mine site to conduct a regular inspection. On that date, the inspector, after watching the truck in operation, questioned the Applicant about the condition of the brakes on the truck. The Applicant informed the inspector that the truck had no brakes, and he felt it was unsafe to operate the truck without brakes.

The operator was aware of the Applicant's protected activity because he was confronted by Richard Grant, a supervisor. Grant threatened the Applicant with discharge, if he spoke to an MSHA inspector again.

The Applicant was laid off and ultimately fired after the truck he operated was removed from service for lack of brakes.

Mine Management's actions were motivated by the Applicant's protected activity.

#### Discussion

Based on the contents of the file, it is indicated that the Commission has jurisdiction to consider the request for temporary reinstatement.

Further, talking to an MSHA inspector and informing him of the condition of the brakes on the truck was an activity protected under the Mine Act.

In addition, Respondent took adverse action against Applicant in discharging him.

Finally, the facts indicate Respondent's actions were motivated by Applicant's activity which was protected under the Mine Act.

For the foregoing reasons, I conclude that the application filed herein was not frivolously brought.

Accordingly, I enter the following:

#### ORDER

1. The application for temporary reinstatement is GRANTED.
2. Respondent is ORDERED to reinstate Applicant Martin L. Richardson to the position he held on August 8, 1990, at the same rate of pay and with the same equivalent duties that were assigned to him immediately prior to his discharge.

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3. The undersigned Judge will retain jurisdiction of this case.

4. The parties will be afforded an opportunity to be heard on the merits of any discrimination complaint hereafter filed herein.

5. Correspondence was forwarded by the Judge's office to Martin L. Richardson at the address of 2316 Statz Street, North Las Vegas, Nevada 89030. The letter was returned indicating delivery had not been made. The envelope was marked "ATTEMPTED, NOT KNOWN."

An agent of Airborne Express also indicated to the Judge that they could not locate Mr. Richardson.

Mr. Richardson also called the Judge's office and stated that his telephone had been disconnected because he didn't have money to pay his telephone bill.

In view of the above, a representative of the Secretary is directed to attempt personal service of this order to Mr. Richardson.

John J. Morris  
Administrative Law Judge