

CCASE:  
SOL (MSHA) v. COBRA MINING  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, Vvirginia 22041

SECRETARY OF LABOR FOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
FOR AMOS HICKS,  
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. VA 89-72-D

NORT CD 89-18

v.

COBRA MINING, INC.,  
JERRY K. LESTER, AND  
CARTER MESSER,  
RESPONDENT

DECISION

Before: Judge Weisberger

On January 13, 1992, the Commission issued a decision on this matter remanding this case to me for additional reconsideration with regard to the amount of consequential damages Complainant is entitled to in connection with the loss of his pickup truck that was repossessed shortly after he was discriminatorily discharged in May 1989. (Docket No. VA 89-72-D 14 FMSHRC \_\_\_) Specifically, the Commission directed that the record be reopened to receive evidence of the value of the truck at the time of repossession.

On January 17, 1992, I issued an Order requiring the parties, by Janaury 31, 1992 to ". . . confer and attempt to stipulate the fair market value of the vehicle in question at the time of repossession. Should this amount be stipulated to, the parties shall file a stipulation by January 31, 1992. If the parties cannot stipulate to the value of the truck, then, by January 31, 1992, the parties shall file evidence of the market value of the truck at the time of repossession. The evidence filed shall pertain to such factors as the condition of the truck, equipment options, depreciation during the 14 months Complainant owned it, and independent appraisal manuals. Each party shall have the right to reply to the other party's submission of evidence. Such reply shall be filed by February 7, 1992."

Pursuant to a request from Complainant, a one week extention was granted to comply with the terms of the Order.

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On February 7, 1992 the Secretary filed a Brief containing a statement regarding the fair market value of the truck in question. Respondents have not filed any submission required by the Order of January 17, 1992.

The representations in Complainant's Brief and the statements submitted in the Brief, regarding the fair market value of the subject truck have not been contradicted or rebutted by Respondent who have not responded to the Order of January 17, 1992. Accordingly, I accept the figures submitted by Complainant and find that the fair market value of the truck when repossessed was \$9,927.98 Further, when the amount is reduced by resale amount of the truck (\$7,400) and increased by the losses Mr. Hicks incurred during the repossession, the resulting amount, \$2,670.42 is the damages owed Complainant.

Complainant also represents that interest has been calculated to be \$667 from the "day of repossession through the present date". Respondent have not filed any submission disagreeing with this representation, and therefore it is accepted.

Accordingly it is ORDERED that Respondents shall, within 30 days of this Decision, pay Complainant \$2,670.42, as consequential damages, for the loss of his truck, plus interest of 667.02.

Avram Weisberger  
Administrative Law Judge