

CCASE:  
SOL (MSHA) V. SOVEREIGN MINING  
DDATE:  
19940307  
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
2 SKYLINE, 10th FLOOR  
5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : TEMPORARY REINSTATEMENT  
MSHA, on behalf of : PROCEEDING  
DANNY SHEPHERD, :  
Petitioner : Docket No. KENT 94-69-D  
v. :  
: BARB CD 93-25  
SOVEREIGN MINING COMPANY, : BARB CD 93-27  
Respondent :  
: Mine No. 1

DECISION APPROVING SETTLEMENT

Before: Judge Feldman

On October 28, 1993, the Secretary filed an Application for Temporary Reinstatement on behalf of Danny Shepherd. The respondent did not contest the reinstatement application. Consequently, on November 18, 1993, I issued an Order requiring the respondent to reinstate Shepherd immediately. 15 FMSHRC 2365 (November 1993).

On December 3, 1993, the Secretary filed a Motion to Compel Compliance with my November 18, 1993, reinstatement order. The Secretary's motion was based on the respondent's alleged circumvention of my order as a result of the respondent's contemporaneous reinstatement and "layoff" of Shepherd on November 19, 1993. On December 17, 1993, the Commission remanded this matter to me for consideration of the issues raised in the Secretary's Motion to Compel and the respondent's response. Secretary, on Behalf of Danny L. Shepherd v. Sovereign Mining Company, 15 FMSHRC 2450 (December 1993).

Consistent with the Commission's Remand Order, I participated in several conference calls with the parties. These conference calls culminated in a conference on February 8, 1994, wherein the parties informed me that they had reached settlement. A Joint Motion to Approve Settlement was filed on February 23, 1994.

The terms of the agreement are that Danny L. Shepherd agrees to withdraw the instant temporary reinstatement application. Shepherd also agrees to withdraw his most recent discrimination complaint filed with the Mine Safety and Health Administration (MSHA) on December 2, 1993, after his November 19, 1993 layoff. (Case No. MSHA BARB-CD-94-10). In addition, Shepherd will also

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withdraw the underlying discrimination complaints involved in this action (Case Nos. BARB-CD-25 and 27), all of which are currently pending before MSHA. Finally, the Secretary agrees to file the necessary documents to dismiss a related civil penalty proceeding against the respondent in Docket No. KENT 94-265.

In consideration of the above noted actions by Danny L. Shepherd and the Secretary, Sovereign Mining Company agrees:

1. To pay Shepherd \$10,000 in liquidated damages;
2. to pay \$2,250 in attorney fees to the Mine Safety Project of the Appalachian Research and Defense Fund of Kentucky; and
3. to pay MSHA \$2,750.00 in satisfaction of the proposed civil penalty for Citation No. 3402675, which was issued by MSHA to Sovereign Mining on November 23, 1993. (Footnote 1)

The settlement agreement further provides that all payments are to be made within ten days of the execution date (February 22, 1994) of the agreement. Finally, Sovereign Mining Company agrees to expunge all records of Shepherd's past discrimination complaints. If contacted by a prospective employer of Shepherd, Sovereign Mining agrees not to divulge any information concerning Shepherd's activities other than the dates of Shepherd's employment with the company.

After careful consideration of the joint settlement motion, I conclude that the settlement disposition is reasonable and in the public interest. ACCORDINGLY, in view of the mutually agreeable settlement, the settlement terms ARE APPROVED and the joint motion to dismiss this temporary reinstatement proceeding IS GRANTED.

Jerold Feldman  
Administrative Law Judge  
(703) 756-5233

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1 This citation is not before me. It is mentioned solely to document the terms of the settlement agreement.

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