

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001

May 13, 2003

SECRETARY OF LABOR,	:	TEMPORARY REINSTATEMENT
MINE SAFETY AND HEALTH	:	PROCEEDING
ADMINISTRATION (MSHA), on behalf of	:	
CHARLES SCOTT HOWARD,	:	Docket No. KENT 2003-245-D
Complainant	:	BARB CD 2003-07
v.	:	
	:	Mine ID 15-18198
PANTHER MINING, LLC, CAVE SPUR	:	No. 1 Mine
MINING, LLC, and BLACK	:	
MOUNTAIN RESOURCES, LLC,	:	
Respondent	:	

**DECISION APPROVING SETTLEMENT /**  
**ORDER FOR TEMPORARY REINSTATEMENT**

Appearances: J. Phillip Giannikas, Esq., U.S. Department of Labor, Office of the Solicitor, Nashville, Tennessee, on behalf of the Secretary of Labor;  
Stephen A. Sanders, Esq., Appalachian Citizens Law Center, Inc., Prestonsburg, Kentucky, on behalf of the Complainant;  
Stephen M. Hodges, Esq., Abingdon, Virginia, on behalf of the Respondents.

Before: Judge Melick

At hearings on May 7, 2003, the parties negotiated a settlement agreement, and based on that agreement, a bench decision was issued ordering “economic reinstatement” of the Complainant, Mr. Charles Scott Howard, recognizing that Mr. Howard had obtained other employment but at a lower rate of pay. The bench decision provides as follows with only non-substantive corrections:

JUDGE MELICK: Back on the record. Just for the record, counsel have been negotiating and the parties have come to an agreement with respect to temporary reinstatement. I will issue a bench order of temporary reinstatement to implement the parties’ agreement.

That order will be, first of all in light of Mr. Howard’s current employment with another company, the Respondents will pay, effective tomorrow, May 8<sup>th</sup>, to Mr. Howard the difference between his average weekly pay for his last four weeks of employment at Cave Spur Mining, LLC, and the amounts he is earning based on his average weekly pay at his current job, and that the checks in payment will be mailed to Mr. Howard’s regular address. This payment shall continue until the final order is issued in the discrimination case on the merits.

As an adjunct to this agreement the parties have agreed to expedite the trial on the merits of the discrimination case. The complaint in that case will be filed by the Secretary within two weeks from today's date; and the Respondents have agreed to file an answer to that complaint within one week of their receipt of the complaint. The trial on the merits will commence on Wednesday, June 18<sup>th</sup>, and, if necessary, continue into June 19<sup>th</sup> of this year.

One other thing, the parties have agreed to proceed with depositions with the objective of completing these depositions seven days before the hearing scheduled in this matter.

That decision and order is hereby now confirmed pursuant to Commission Rule 69, 29 C.F.R. § 2700.69.

Gary Melick  
Administrative Law Judge

Distribution: (By Facsimile and Certified Mail)

J. Phillip Giannikas, Esq., Office of the Solicitor, U.S. Dept. of Labor, 2002 Richard Jones Rd., Suite B-201, Nashville, TN 37215-2862

Stephen A. Sanders, Esq., Appalachian Citizens Law Center, Inc., 207 W. Court Street, Suite 202, Prestonsburg, KY 41653-7725

Stephen M. Hodges, Esq., 208 Main Street, Abingdon, VA 24210-2904

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