

CCASE:
SOL (MSHA) V. BLACK DRAGON MINING
DDATE:
19931028
TTEXT:

October 28, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION on behalf of	:	
FREDDY THACKER	:	
	:	
Complainant	:	Docket No. KENT 93-977-D
	:	
v.	:	Case No. PIKE CD-93-12
	:	
BLACK DRAGON MINING COMPANY	:	
	:	
Respondent.	:	
	:	
	:	

ORDER

On October 18, 1993, Administrative Law Judge Roy J. Maurer concluded that the discrimination complaint of Freddy Thacker against Black Dragon Mining Company ("Black Dragon") was not frivolously brought, granted the Secretary of Labor's application for temporary reinstatement and ordered Thacker's immediate reinstatement.

On October 22, 1993, the Secretary filed with the judge a "Motion Seeking Compliance with Temporary Reinstatement Order." Since the judge's jurisdiction ended upon issuance of his order, the Secretary's motion in this proceeding was forwarded to the Commission. Commission Procedural Rule 69(b), 58 Fed. Reg. 12171 (March 3, 1993), to be codified at 29 C.F.R. 2700.69(b) (1993). In the motion, the Secretary asserts that Black Dragon failed to reinstate Thacker on October 20, 1993, and that it refused to pay him for that day, and, thus, violated "the plain wording and the spirit" of the reinstatement order. Therefore, the Secretary seeks an order requiring Black Dragon to pay the complainant for October 20, 1993.

On October 26, 1993, the Secretary filed a second motion before Judge Maurer. In this motion, the Secretary asserted that the complainant had received a telephone death threat pertaining

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to his reinstatement as well as a number of prank telephone calls. The Secretary further asserted that these calls placed the complainant in fear for his safety and that of his family. On the basis of these assertions, the Secretary sought to have economic reinstatement for Thacker (which by agreement between the parties was to continue until his return to work on October 27) remain in effect until Black Dragon's "thorough investigation into the death threat made to Mr. Thacker, including the harassing telephone calls, and the operator's report to the Court on its investigative effort and findings." Secretary's October 26 Motion at 3.

Black Dragon responded to the Secretary's October 26 Motion on the same day, vigorously denying that Black Dragon or its employees were in any way connected with the asserted threat, suggesting that the claim of threat was an attempt to receive wages without being required to work, and requesting that the Secretary's motion for continued economic reinstatement be denied.

As noted above, the judge's jurisdiction in this matter terminated upon issuance of his October 18 Order of Temporary Reinstatement. Accordingly, we remand this proceeding to Judge Maurer for consideration of the Secretary's motions and Black Dragon's responses.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner