

CCASE:
SOL (MSHA) V. SOVEREIGN MINING
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December 17, 1993

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| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), on behalf | : | |
| of DANNY SHEPHERD | : | |
| | : | |
| v. | : | Docket No. KENT 94-69-D |
| | : | |
| SOVEREIGN MINING COMPANY | : | |

BEFORE: Holen, Chairman; Backley, Doyle, and Nelson, Commissioners

ORDER

BY THE COMMISSION:

On November 18, 1993, Administrative Law Judge Jerold Feldman concluded that the discrimination complaint of Danny Shepherd was not frivolously brought and, accordingly, ordered Shepherd's immediate reinstatement.

On December 3, 1993, the Secretary filed with the Commission, a motion to compel compliance with the judge's order of temporary reinstatement or, alternatively, to remand the matter to the administrative law judge. In the motion, the Secretary stated that the complainant was laid off by Sovereign Mining Company ("Sovereign") on November 19, 1993, the day after the judge's order was issued. The Secretary asserts that Shepherd should not have been laid off and that, by its action, Sovereign was circumventing the temporary reinstatement order.

On December 13, 1993, Sovereign filed a response to the Secretary's motion, denying the assertions made by the Secretary regarding Shepherd's layoff. Both Sovereign and the Secretary state that remanding this matter to the judge would be an appropriate way to dispose of the issues raised in the motion and the response.

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The judge's jurisdiction in this matter terminated with the issuance of his order of temporary reinstatement on November 18. Commission Procedural Rule 69(b), 58 Fed. Reg. 12171 (March 3, 1993), to be codified at 29 C.F.R.

2700.69(b)(1993). Accordingly, we remand this matter to Judge Feldman to resolve the issues raised by Secretary's motion and Sovereign's response. See *Black Dragon Mining Company*, 15 FMSHRC 2110, 2111 (October 1993).

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner