

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELAWARE RIVER & BAY	§
AUTHORITY,	§
	§ No. 131, 2000
Employer Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for Sussex County
CHARLES SEWELL,	§ C.A. No. 99A-07-003
	§
Claimant Below-	§
Appellee.	§

Submitted: April 6, 2000

Decided: May 12, 2000

Before **HOLLAND, HARTNETT** and **BERGER**, Justices

ORDER

This 12th day of May 2000, it appears to the Court that:

(1) On March 29, 2000, the employer-appellant, Delaware River & Bay Authority (the “Authority”), filed a notice of appeal in this Court from an opinion and order of the Superior Court dated February 29, 2000. The Superior Court’s February 29 order reversed a decision of the Industrial Accident Board (“IAB”), which awarded compensation to claimant-appellee, Charles Sewell, for a permanent partial impairment of his right leg. The Superior Court held that the IAB was correct in awarding compensation, but had utilized an improper

legal standard for determining the amount of compensation due.¹ The Superior Court reversed the decision of the IAB and remanded the matter for further proceedings consistent with its decision.

(2) On April 3, 2000, the Clerk of this Court issued a notice to the Authority to show cause why the appeal should not be dismissed for failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order.

(3) On April 6, 2000, the Authority filed a response to the notice to show cause. It contends that because “there can be but one outcome based on [the Superior Court’s] ruling and determination of law,” and because [n]othing done at the Industrial Accident Board level will change that,” the appeal is not interlocutory and not subject to dismissal pursuant to Rule 42.

We have reviewed the Superior Court’s decision below and the response to the notice to show cause and can not conclude that the IAB’s determination on remand of an appropriate award of benefits for a permanent partial impairment

¹The Superior Court held that “[w]hen an industrial injury triggers disability or impairment from a latent prior condition, the entire condition is compensable and no attempt should be made to weigh the relative contribution of the accident and the pre-existing condition to the final result.” *Sewell v. Delaware River & Bay Authority*, Del. Super., No. 99A-07-003, Stokes, J., slip op. at 15 (Feb. 29, 2000).

will be purely ministerial in nature.² The Superior Court's order of remand, therefore, is interlocutory. Consequently, because the Authority has failed to comply with the procedural requirements of Supreme Court Rule 42, this appeal must be dismissed.³

NOW, THEREFORE, IT IS ORDERED that the appeal is hereby DISMISSED pursuant to Supreme Court Rules 29(b) and 42.

BY THE COURT:

/s/Maurice A. Hartnett, III

Justice

²*Pollard v. The Placers, Inc.*, Del. Supr., 692 A.2d 879, 880-81 (1997).

³See Supr. Ct. R. 42; *Julian v. State*, Del. Supr., 440 A.2d 990, 991 (1982).