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Panel Orders Whistleblower Reinstated

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NEW YORK — A tiny Virginia bank, at the heart of a closely watched case testing the nation's protection of corporate whistleblowers, must reinstate an executive it fired after he criticized accounting practices, a federal labor board has ruled.

The ruling by the Department of Labor's Administrative Review Board, is far from the final word in the long-running dispute between Cardinal Bankshares Corp. and David Welch, its former chief financial officer. But it is an important step, both for the two sides and for many companies that have followed the case closely.

The ruling, dated June 9 but not made public until late Tuesday, denies a request by Cardinal _ a holding company for the Bank of Floyd in southwest Virginia _ to stay a Labor Department judge's earlier order that it take Welch back.

In 2004, Welch became the first worker to win protection as a whistleblower under the Sarbanes-Oxley Act, passed by Congress in 2002 after corporate scandals at Enron Corp., WorldCom Inc. and other companies. Cardinal has refused ever since to reinstate Welch.

"We anticipate that Cardinal can productively use Welch's skills while his case is being litigated," the ARB said in its decision. "Welch has waited more than 3 1/2 years to have his pay and benefits restored."

Welch's lawyer, Bruce Shine of Kingsport, Tenn., said Tuesday that the ruling, while an interim step, is a victory for the former bank officer.

"It is a great case for Dave Welch. I think it is a great case for the whole whistleblower concept under Sarbanes-Oxley," Shine said. "It shows that this act (Sarbanes-Oxley) has meaning and substance."

Under the law, the bank is now supposed to reinstate Welch to his job on an interim basis or offer him payment instead of reemployment, while the Administrative Review Board takes time to examine the case in full. But if the bank does not do so, enforcement of the order would be left up to a federal district court.

A lawyer for Cardinal, Laura Effel, said the bank will not bring Welch back until it is compelled to do so by the court.

"We're defending the case and we're defending the attempt to put him back before the end of the case and so we would not voluntarily comply with this. We will defend an attempt to have this enforced in

the district court," Effel said.

While that may take time, the ruling that the company must take Welch back is an important step, said Jason Zuckerman, a Washington lawyer representing workers who claim status as whistleblowers.

"What's so important about having him back in the workplace is that it will send a signal to other employees that they can blow the whistle and they keep their jobs," Zuckerman said.