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AUBREY M. BRADLEY V. UNIVERSAL COAL AND ENERGY
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

AUBREY M. BRADLEY III,
APPLICANT

Application for Review

Docket No. DENV 78-17

v.

UNIVERSAL COAL AND ENERGY
COMPANY,
RESPONDENT

DECISION

Appearances: David B. Rogers, Esq., Smith, Lewis & Rogers, Columbia, Missouri, for Applicant;
N. William Phillips, Esq., Milan, Missouri, & George J. Anetakis, Esq., Frankovitch & Anetakis, Weirton, West Virginia, for Respondent.

Before: Judge Charles C. Moore, Jr.

Aubrey M. Bradley III alleges discrimination on the part of Universal Coal and Energy Company (hereinafter referred to as Universal) in that he was fired because of safety violation complaints. Mr. Bradley was employed by Universal as a scraper operator from August 27, 1977, to October 4, 1977. During the last 3 weeks of this time frame, Mr. Bradley noted in his daily time reports that the 627 Cat scraper he was operating did not have effective brakes. Thereafter, he orally reported to the mine superintendent, Mr. Russ Walker, the condition of the relevant brakes. Furthermore, on Friday, October 1, 1977, 3 days before the Applicant was discharged, he spoke with the union safety officer, Don Durham, concerning the condition of the brakes. Mr. Durham immediately contacted Mr. Walker to inquire whether anything could be done about the condition of the brakes. When Mr. Bradley came to work the following Monday, October 4, 1977, he was discharged. He noted that the scraper had been put on blocks and its wheels had been removed for purposes of repairing its brakes.

The Applicant alleges that the brakes on the scraper did not work and that the scraper could not be stopped without the use of the bucket (Tr. 16). In fact, he was of the opinion that if one were going backwards on an incline, the machine could not be stopped (Tr. 17). The Applicant was also of the opinion that Universal never examined or made any repairs in response to his complaints concerning the brakes (Tr. 22).

The Respondent offered evidence that the brakes were examined and the necessary adjustments were made to the brakes. The mechanic, Thomas H. Gann, who had worked in the same pit area as Mr. Bradley, testified that upon receiving a complaint from Mr. Bradley, he would check and adjust the brakes (Tr. 67, 68). He did not find anything wrong with the brakes, nor did he receive a complaint from anyone else about them (Tr. 67).

The Respondent also showed that it was normal procedure to use the pan when stopping the scraper. Mr. Meyer, a scraper operator, who worked the same shift as Mr. Bradley, testified that any brakes would only serve to slow down a fully-loaded scraper. This necessitated the use of the pan to stop a scraper (Tr. 43). Mr. Meyer also testified that he had operated Mr. Bradley's scraper for a few days and during this time, he had no trouble stopping the scraper (Tr. 43).

The president of the union local, Mr. Couch, who operated the same scraper as Mr. Bradley, but on a different shift, testified that he had no trouble with the brakes. He also said a brand new fullyloaded scraper going down a hill would very seldom be stopped by using only the brakes (Tr. 81); thus, it is quite common to use the pan when stopping the scraper (Tr. 87).

The mechanic, Mr. Gann, also explained why the scraper was on blocks on Monday, October 4, 1977. He indicated that the scraper had been in good working order on the previous Friday when he had last checked it (Tr. 70). It was only over the weekend that a problem developed and when it was discovered, it was repaired immediately (Tr. 70, 75, 76, 77).

I thus find that Universal was properly maintaining and repairing the brakes on the 627 Cat scraper. It should be noted that not only did each of the three union witnesses speak favorably as to Universal's regard for the safety of its employees and the maintenance of its equipment (Tr. 58, 71, 82), but the mine in question had recently won a safety award for its low occurrence of accidents (Tr. 83, 90).

Universal maintains that the discharge of Mr. Bradley had nothing to do with his safety complaints (Tr. 88, 105). Under his contract, Mr. Bradley was classified as a probationary employee. This meant that Universal had 60 days to evaluate the performance of Mr. Bradley to determine whether he was qualified to continue working with the company, and thus gain membership in the union (Tr. 20, 87, 116). If the company during this time period, makes a determination that an individual has not performed satisfactorily, they have a right to release him under the contract (Tr. 87). As a consequence of this contractual relationship, Universal argues that Mr. Bradley was properly discharged as an employee whose performance during his probationary period did not merit continued employment (Tr. 116).

In support of its position, Universal presented evidence that Mr. Bradley was not operating his scraper properly. Three witnesses testified that he carried the pan too high, which could cause the machine to overturn (Tr. 45, 46, 92, 102). Also, there was testimony that the Applicant would drive over large rocks which could damage the machine's transmission (Tr. 52). Furthermore, three witnesses testified that not only would Mr. Bradley repeatedly get his machine stuck in the mud, but on a few occasions would intentionally attempt to do so (Tr. 47, 48, 49, 53, 68, 93, 108). Also, there was testimony presented that the Applicant would take excessively long work breaks (Tr. 50, 51, 72, 92); not punch out when his machine was being repaired (Tr. 52, 60); and his behavior was generally uncooperative (Tr. 43, 93, 100, 102, 104). The foregoing evidentiary presentation was not only proffered by the company's vice president of operations and pit foreman, but it is also noteworthy that these observations were made by two of Mr. Bradley's fellow employees who worked in the same pit area with him. It is noted that when the company was having meetings where they reviewed Mr. Bradley's probationary status, they did not even discuss the Applicant's safety reports during such meetings (Tr. 89).

I find from the foregoing that the evidence indicates that Mr. Bradley was fired because he was not operating his scraper properly, he had poor relations not only with management but also with his fellow employees, and his behavior was generally uncooperative.

Based on the foregoing, I find that Applicant has failed to carry its burden of showing he was discharged because of safety complaints. The case is accordingly dismissed.

Charles C. Moore, Jr.
Administrative Law Judge