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RICHARD MULLINS V. EASTOVER MINING  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

RICHARD J. MULLINS,	COMPLAINANT	Complaint of Discharge, Discrimination, or Interference
v.		Docket No. VA 80-60-D
EASTOVER MINING COMPANY,	RESPONDENT	CD 79-297 Eastover Mine

DECISION

Appearances: Richard J. Mullins, Norton, Virginia, pro se  
Karl S. Forester, Esq., Harlan, Kentucky,  
for Respondent

Before: Administrative Law Judge Melick

This case is before me upon the complaint by Richard J. Mullins under section 105(c)(3) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq., the "Act"), alleging that he was discharged by the Eastover Mining Company (Eastover) in violation of section 105(c)(1) of the Act. An evidentiary hearing was held on August 26, 1980, in Abingdon, Virginia.

Section 105(c)(1) provides in relevant part that:

No person shall discharge or in any manner discriminate against \* \* \* or otherwise interfere with the statutory rights of any miner \* \* \* in any coal \* \* \* mine subject to this Act because \* \* \* of the exercise by such miner \* \* \* on behalf of himself or others of any statutory right afforded by this Act.

Although Mullins' complaint in this case has never been precisely articulated as best as can be determined he seems to claim that he was unlawfully discharged because he was fired at a time when he was performing his duties as a "fire boss" thereby preventing him from completing the health and safety functions relating thereto. If this indeed is the nature of his complaint then it is of course facially insufficient to raise a justiciable issue under section 105(c)(1) of the Act. The violation of a protected right must necessarily precede and be a cause for the alleged unlawful discharge. In any event I do not find under the circumstances of this case that the Complainant was ever in fact discharged.

The essential facts are not in dispute. Mullins was, at the time in question, the designated "fire boss" on the third shift. Larry Baker was

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then the general mine foreman in charge of the third shift and was therefore Mullins' supervisor. In the early morning of August 31, 1979, Baker directed Mullins to take two miners to the No. 2 tailpiece to see if it was "gobbed off," i.e., jammed by falling debris. If such a condition did exist, it is conceded that it posed a serious safety hazard from fire and smoke and would have been a violation of Federal safety standards.

Mullins apparently escorted the two miners to the No. 2 tailpiece then left to "fire boss" another section of the mine. When Mullins returned at around 2:15 a.m., the belt was still not running. Baker had, in the interim, called down to determine whether the belt was working and when advised that it was not, entered the mine himself walking about 1 mile to the No. 2 tailpiece. When Baker arrived, he observed Mullins and the two female miners standing around doing nothing. Baker thereupon picked up a nearby hose and cleaned the belt himself, thereby permitting it to operate. Baker then asked Mullins why he had not remained at the tailpiece to see that the belt was properly cleared and running. Mullins apparently responded to the effect that Baker was not his boss and that he did not have to take orders from him. The exchange over who was the boss became heated and Baker finally told Mullins that "if you keep running your mouth, I'm going to fire you." The argument continued and Baker finally ordered Mullins to go to the surface with him to see Charlie McNulty, superintendent in charge of the mine. When they reached the surface, McNulty told Mullins that he would not make a decision about his job until he heard both sides of the argument. He would act as an arbitrator in the case. Mullins thereupon went to the bathhouse, completed his "fireboss" books, left the premises and never returned. McNulty never made any decision whether to retain or discharge Mullins since Mullins never returned.

Within this framework of evidence, I am convinced that Mullins was never in fact discharged, but rather voluntarily left his job and never returned. The most that can be gleaned from the evidence is that Mine Superintendent McNulty would hear both sides of the argument before deciding what to do. Mullins himself admits that McNulty never fired him and indeed continues to assert that Baker did not have the authority to fire him.

Under the circumstances I conclude that there was, in fact, no discharge at all. Since there was no discharge, there could not have been an unlawful discharge under the Act. The complaint is therefore DISMISSED.

Gary Melick  
Administrative Law Judge