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DALE EAGLE V. SO. OHIO COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

DALE A. EAGLE,
COMPLAINANT

Complaint of Discharge

v.

Docket No. WEVA 80-487-D

SOUTHERN OHIO COAL COMPANY,
RESPONDENT

Martinka No. 1 Mine

DECISION

Appearances: P. Lee Clay, Esq., Fairmont, West Virginia, for
Complainant;
D. Michael Miller, Esq., J. Statler Beachler, Esq.,
Columbus, Ohio, for Respondent

Before: Judge Melick

This case is before me upon the complaint by Dale A. Eagle 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 an unlawful discharge of him by the Southern Ohio Coal Company (Southern). A hearing was held on October 28 and 29, 1980, in Morgantown, West Virginia, at which both parties, represented by counsel, appeared and presented evidence.

The issue in this case is whether Mr. Eagle was unlawfully discharged by Southern in violation of section 105(c)(1) of the Act because of his alleged safety-related activities at Southern's Martinka No. 1 Mine. Section 105(c)(1) reads in part as follows:

No person shall discharge or in any other manner discriminate against * * * or otherwise interfere with the exercise of the statutory rights of any miner * * * because such miner * * * has filed or made a complaint under or relating to this Act, including a complaint notifying the operator or the operator's agent, or the representative of miners * * * of an alleged danger or safety or health violation * * *, or because such miner * * * is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner * * * has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such

proceeding, or because of the exercise by such miner * * * on behalf of himself or others of any statutory right afforded this Act.

Before hearing, Southern moved to dismiss the complaint on the grounds that, inter alia, Eagle as a nonunion management employee was not a "miner" within the scope of section 105(c)(1) of the Act and that he was not therefore entitled to the protections afforded therein. The short answer to this contention is, however, found in the Act itself in which the term "miner" is unambiguously defined as any individual working in a coal or other mine. See section 3(g) of the Act. Nonunion management personnel working in a coal mine are therefore "miners" for purposes of section 105(c)(1) and are accordingly entitled to the protections afforded therein.

Southern also alleged in its motion that Eagle's complaint did not state facts sufficient to bring the claim within the ambit of activities protected by section 105(c)(1). Eagle maintains that his claim of unlawful discharge is grounded upon his exercise of a statutory right afforded under the law of West Virginia. Since the provisions of section 105(c)(1) do in fact limit the protected rights of miners to only those statutory rights recognized by the Federal law it is clear that a right found only in State law and not recognized by the Federal law does not give rise to a valid claim under section 105(c)(1). Whether or not the alleged right is protected by the law of any State is therefore immaterial. The test is whether that right which may or may not also be recognized by State law is one protected by the Federal mine safety law.

The complaint here, as clarified at hearing, appears to be that foreman Dale Eagle was fired because he made the decision to take his men off production-type work to correct what is claimed to have been an imminently dangerous safety defect in the mine ventilation system. I conclude that such activity would indeed be protected under the Act. In the case of Secretary (o.b.o. David Pasula) v. Consolidation Coal Company, 2 FMSHRC 6D (October 14, 1980), the Federal Mine Safety and Health Review Commission found that the refusal of a miner to work in unsafe or unhealthful working conditions was a protected activity within the purview of the Act. I find that a decision to correct a serious safety or health hazard rather than to perform production-type work is the essential equivalent of refusing to work in unsafe conditions. The motion to dismiss filed herein is therefore denied.

For the reasons that follow, however, I conclude that on the facts of this case the allegations in the complaint cannot be supported. Even assuming, arguendo, that the hazard alleged by Eagle was an imminently dangerous one requiring immediate corrective action (which in reality it was not) it is clear that the decision by Clark Morris, general foreman for the Martinka No. 1 Mine, to discharge Eagle was made without knowledge of any such alleged hazard and without knowledge of the alleged protected activity but was based upon grounds completely independent of any protected activity.

The essential facts are as follows. On March 3, 1980, Complainant Eagle was foreman of a six-man work crew on the 8:00 to 4:00 day shift. His crew

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and a crew under foreman Harold "Dick" Barr were working together that day setting up the steel framework for a new conveyor belt. The crews would begin about 100 feet apart and work toward each other in completing a particular section. At the beginning of the shift, project supervisor Chuck Sponsler had warned Eagle and Barr to be sure they kept their men busy that day because they were expecting a visit from mine officials.

According to Eagle, at around 2:40 p.m., he saw several of the mine officials including Mine Foreman Morris. Morris wanted to know the identity of some miners who were standing idle at the nearby power center. Eagle agreed to check on the problem but claimed they were not his men. Eagle later learned that he was discharged by Morris at the end of the shift around 4:00 p.m. when he was filling out his time sheets. Eagle concedes that he did not know whether Morris was aware that he had assigned his men to the alleged safety work (repairing the return air doors) before he was discharged.

Morris testified that he entered the mine at around 2:00 p.m. accompanied by Mine Superintendent Tompkins and several other officials. Arriving at the power center, he heard men laughing and talking loudly and saw that the dinner hole was full of men. One of the men told Morris that they had progressed to the water hole (a pool of water through which the belt line would have to pass) and then "knocked off" for the day. (FOOTNOTE 1) Morris recognized later that several of this group of 10 or 11 men at the dinner hole were from Eagle's work crew. Some of the men were even dressed to leave for the day although it was an hour before quitting time. Morris located Eagle and Barr and told them to find some work for the men. Morris had previously warned Eagle and Barr about stopping work before the end of the shift.

Morris later returned at around 3:15 to see if the men were working. As he passed through the "16-switch" ventilation doors he saw several of the miners without tools sitting in the mantrip and two standing beside it ready to leave for the day. Outraged, Morris at this point decided to fire Eagle and Barr and told Tompkins of this decision. When Eagle and Barr later came outside at the end of the shift, he told them they were fired. Morris testified that he did not know of any plans Eagle may have had to work on the ventilation doors until he was told of this allegation by Sponsler. By that time the decision to release the men had already been made.

Sponsler, the project supervisor, testified that around 3:00 p.m. he too saw a group of what he thought was about eight to 10 men at the dinner hole. Barr and Eagle were then about 200 feet away. When asked about the idle men, Eagle told him "I don't want to hear no shit, I am going to have

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some men fix the doors." Sponsler did not have occasion to tell Morris of the purported project until later. Morris by that time had already made up his mind to fire Barr and Eagle for their repeated failure to keep the men working.

James Tompkins, superintendent of the Martinka Mine, accompanied Morris that afternoon. He too heard the laughter and noise around the power center and observed some 10 to 11 idle men in that area. He also recalled that they later found four or five men in the vicinity of the "16-switch" doors just sitting in the "bus" (mantrip) laughing. It was about this time that Morris told Tompkins that Barr and Eagle would have to go. Tompkins agreed with the decision.

Although Barr thought that he had told Morris when confronted by him in the mine that the idle men were preparing to fix ventilation doors, he was not certain of this. I do not believe that this was an accurate recollection inasmuch as Morris specifically denied having this information before making his decision to fire the men, and the testimony of Tompkins, Sponsler and indeed even Dale Eagle himself corroborates Morris on this point. Barr concluded, moreover, that he and Eagle were fired not because of any anticipated safety work but because Morris indeed found their men at a time when they were not actually working.

Under the circumstances, I conclude that Mine Foreman Morris made the decision to discharge Barr and Eagle for reasons unprotected by the Act and that indeed he made the decision without any knowledge of Eagle's alleged protected activity, i.e., his anticipated repair work on ventilation doors. (FOOTNOTE 2) The discharge was therefore not motivated in any part by the alleged protected activity. Pasula, supra. Eagle's complaint cannot therefore be supported and is accordingly dismissed.

Gary Melick
Administrative Law Judge

~FOOTNOTE_ONE

1 According to one of the miners called by Eagle to testify, no one wanted to work in this water hole so it was decided to leave that work for the night shift. Eagle was quoted as saying "We can't quit now, you might as well go fix some doors * * * it's too early to quit". These do not sound like the words of a man intent on correcting an imminent danger.

~FOOTNOTE_TWO

2 The decision of a trial examiner for the West Virginia Department of Employment Security that Eagle was not discharged for misconduct and was thus eligible for unemployment insurance benefits is not necessarily inconsistent with my findings herein but would not in any event have been accorded great weight. That determination has been appealed by Southern and has therefore not become final. Moreover, Southern was not represented by counsel at the hearing, the hearing commenced without the presence of any company representative, and several key witnesses for the

company, including Morris, were not present. The record before the examiner was, as a result, woefully inadequate. Since the Complainant has also failed to submit the rules and regulations governing such proceedings as he was directed to do, I am unable to ascertain the standards applicable thereto. The fact that Eagle claimed at that hearing that he was discharged because of a personality conflict with Morris and not for the reasons now advanced does, however, reflect on the credibility of his complaint herein.