

CCASE:  
SOL (MSHA) v. RIVER COAL  
DDATE:  
19811019  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
ON BEHALF OF  
BRUCE EDWARD PRATT,  
COMPLAINANT

Complaint of Discrimination

Docket No. KENT 81-88-D

No. 1 Mine

v.

RIVER HURRICANE COAL  
CO., INC.,  
RESPONDENT

DECISION AND ORDER

This matter came on for a confrontational-type hearing in Pikeville, Kentucky on October 7 and 8, 1981. The complaint charged the operator with a violation of the anti-discrimination clause of the Mine Safety Law, 30 U.S.C. 815(c)(1). More specifically, the Secretary claimed complainant's retaliatory discharge of Bruce Edward Pratt, a mechanic-repairman, for refusing to accept directions to fight fires that occur on the surface in the junction boxes of large, industrial-type, lead-acid batteries was unlawful because the refusal was based on a good faith, reasonable fear that such fires could result in an explosion of hydrogen gas and acid splash that could cause serious physical injury to him or to others.

The operator admitted complainant was discharged for refusing to accept such directions but claimed that because Mr. Pratt's fear was unreasonable and pretextual it was an act of insubordination that justified his dismissal.

The matter was exhaustively pretried. As a result, the parties were able to file plain and concise statements of their positions together with proposed findings, conclusions and orders prior to the hearing. Counsel are to be commended for the professionalism of their performance which contributed greatly to the trial judge's understanding of the technical factual issues. At the conclusion of the hearing, the parties were afforded an opportunity to supplement their proposals and to present oral argument. Thereafter, the trial judge entered the following decision on the record from the bench:(FOOTNOTE.1)

### Findings and Conclusions

After carefully evaluating the credibility of the witnesses, I find and conclude a preponderance of the reliable, probative and substantial evidence establishes:

1. The fire in the battery trays on August 19, 1980, was the result of a short circuit in the connectors located in the junction box or receptacle.
2. The fire could have caused any hydrogen gas present in the recently charged battery tray to burn or explode.
3. The expert testimony and evidence shows that because the tray did not disintegrate there was an insufficient concentration of hydrogen to cause an explosion or the flames did not propagate sufficient heat to spark an explosion.(FOOTNOTE.2)
4. If there had been an explosion it would in all likelihood have been largely contained within the steel covers and casing that surrounded the battery tray.
5. If the receptacle had been opened or the covers removed any explosion could have sprayed battery acid (sulfuric acid) on the clothes and person of any miners standing near or over it. (BX-1, pp. 8-9).
6. On August 20, 1981, James Calvary Sloan, the operator's chief electrician and Mr. Pratt's superior, had little or no understanding or appreciation of the hazards presented by battery fires or how to instruct his subordinates in the appropriate procedures for coping with a battery fire.
7. Mr. Sloan did not know there was no fire suppressant system for the battery trays on the S&S scoop.
8. Mr. Sloan did not know that a 50 pound bag of rock dust and not a hand held fire extinguisher is the method preferred by the operator's expert witness, Mr. Eddins, for smothering an electrical fire on a battery tray.
9. Mr. Sloan did not fully appreciate the danger of acid splash that attends an electrical fire on a battery tray.

10. Mr. Sloan's demand that Mr. Pratt agree, as a condition of his continued employment, to fight electrical fires on battery trays by attacking the fire without protective clothing or glasses with a hand held ABC fire extinguisher was made without a proper understanding of the hazards involved as detailed by Inspector Lycans.
11. Mr. James Sloan, as chief electrician, was responsible for maintaining the connectors on the battery trays in a corrosion free condition; he failed to do this and this resulted in the short circuit that caused the fire on August 19.
12. Bruce Pratt did not know that because he failed to observe any immediate explosion the danger of a hydrogen gas explosion, if any, may have been over by the time he observed the fire in the battery trays on August 19.
13. Mr. Pratt's ignorance was attributable to a deficiency in the operator's knowledge and in the operator's training program.
14. It was and is impossible for anyone to say with certainty when the danger of a hydrogen gas fire or explosion has passed in a fire on a battery tray.
15. Mr. Pratt's fear, much of which stemmed from his ignorance, was honest and not a pretext for a reckless disregard for his obligation to take reasonable action to protect the lives of his fellow workers or the property of his employer.
16. Mr. Pratt's fear, in view of his lack of training in how best to cope with the danger of a hydrogen gas explosion, was reasonable and certainly, in view of the evidence, was not arbitrary, capricious or so grossly erroneous as to imply bad faith.
17. The operator failed to show that Mr. Pratt's refusal to accept Mr. Sloan's instructions for coping with electrical fires in the connectors of battery trays was arbitrary, capricious or so grossly erroneous as to imply bad faith.
18. Mr. Sloan's discharge of Mr. Pratt was not justified by the circumstances of the alleged insubordination but was largely an overreaction to Mr. Pratt's provocative rejoinders and the long simmering personality conflict between the two men.
19. The conflict in the testimony over the reasonableness of Mr. Pratt's fear is resolved in his favor because much of the contrary testimony consisted of macho, self-serving

testimonials of little probative value. I find much more persuasive the testimony of (1) E. C. Sloan, Mr. Pratt's immediate supervisor and an experienced section foreman who said he would recognized the right of a man to feel a danger, (2) Luther Jarvis, a miner with limited experience and training who said he would have been afraid to approach the fire with just a fire extinguisher, and (3) Inspector Lycans, a miner with over 30 years experience with electrical fires, who said he would consider any attempt to lay hands on the battery trays an imminent danger.

20. Based on Mr. Pratt's knowledge and the attendant circumstances his belief that the fire on August 19 was abnormally dangerous was reasonable.

21. When Mr. Pratt refused to extinguish the fire on August 19 and warned others against it he was engaged in activity protected under section 105(c)(1) of the Mine Safety Law.

22. When on August 20, 1980, Mr. Pratt explained to Mr. Sloan his fear of a hydrogen gas explosion and of the injury such an explosion might inflict he was engaged in activity, i.e., reporting an alleged danger, specifically protected under section 105(c)(1) of the Mine Safety Law.

23. In order to effectuate the purpose of the Mine Safety Law miners must be allowed freedom to express their safety concerns without fear of retaliation by management.

24. Mr. James Sloan's explanation and instructions to Mr. Pratt on August 20 concerning how to cope with fires on battery trays was lacking in technical and factual understanding of the hazards and failed to allay Mr. Pratt's reasonable fears. It is no solution to the problem of recurrent fires in the electrical systems of the electric face equipment at this mine to condone retaliation by discharge of a miner with the temerity to speak out against the hazard.

25. The refusal on August 20 of Mr. Pratt to agree to attempt to extinguish a fire in or around lead-acid batteries under circumstances similar to those that occurred on August 19 was made in a good faith, reasonable belief that a serious risk of injury from an exploding battery existed.(FOOTNOTE.3)

26. Mr. Pratt's refusal to attempt to extinguish such fires in the future was, under the circumstances shown, a protected activity under section 105(c)(1) of the Act and his discharge for such refusal a violation of the Act.



for explosive mixtures of hydrogen is 4.1 per cent, but for safety hydrogen should not exceed 2 per cent. The upper limit is 74 per cent. Maximum violence occurs at a mixture of 2 parts of hydrogen to 1 of oxygen. Vinal, Storage Batteries, A General Treatise on the Physics and Chemistry of Secondary Batteries and their Engineering Applications at 316 (4th ed., 1955).

~FOOTNOTE\_THREE

Secretary of Labor on behalf of David Pasula v. Consolidation Coal Co. 2 FMSHRC 2786, 2793 (1980); Secretary of Labor on behalf of Thomas Robinette v. United Castle Coal Co. 3 FMSHRC 803, 812 (1981).