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ROGER BENTLEY V. WAMPLER BROS. COAL  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

ROGER BENTLEY,  
COMPLAINANT

Complaint of Discrimination

Docket No. KENT 82-75-D

v.

WAMPLER BROTHERS COAL CO.,  
RESPONDENT

DECISION

Appearances: Harold D. Bolling, Esquire, Whitesburg, Kentucky,  
for the respondent Roger Bentley, Jackhorn,  
Kentucky, pro se

Before: Judge Koutras

Statement of the Case

This proceeding concerns a discrimination complaint filed by the complainant against the respondent pursuant to Section 105(c) of the Federal Mine Safety and Health Act of 1977. The complaint was filed pro se after the complainant was advised by MSHA on March 30, 1982, that its investigation of his complaint disclosed no discrimination against him by the respondent. Respondent filed a timely answer denying that it had discriminated against the complainant, and pursuant to notice, a hearing on the merits of the complaint was held in Pikeville, Kentucky, November 23, 1982, and the parties appeared and participated fully therein.

The basis of Mr. Bentley's discrimination complaint in his assertion that mine foreman Larry Wright discharged him because of his belief that Mr. Bentley had complained to an MSHA inspector about certain roof and rib conditions at the mine, which resulted in an inspection of the mine sometime during the period of November 17 to December 3, 1981. In addition, in his initial MSHA complaint, filed on January 18, 1982, Mr. Bentley asserted that he had not been paid for a day of first aid training which he took on a Saturday, and he had not received a copy of his training certificate.

Issue

The critical issue presented in this case is whether Mr. Bentley's discharge was in fact prompted by any protected activity under section

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105(c)(1) of the Act. Specifically, the crux of the case is whether Mr. Bentley's discharge on January 7, 1982, was in retaliation for any safety complaints made by him to MSHA, or whether his discharge was justified because of absenteeism, as claimed by the respondent.

#### Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 301 et seq.
2. Sections 105(c)(1), (2) and (3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(1), (2) and (3).
3. Commission Rules, 29 CFR 2700.1, et seq.

#### Complainant's testimony

Roger Bentley testified that he was hired by the respondent on September 15, 1981, as a roof bolter and was paid \$8.75 an hour, or \$70 a shift. The normal work shift was eight hours a day, five days a week, and the mine is a non-union mine. He was discharged on January 7, 1982 (Tr. 6-8).

Mr. Bentley stated that when he filed his discrimination complaint with MSHA, he included the matter of not being compensated for a day's training which he took on a Saturday in October, and not receiving his training certificate. However, he confirmed that after his discharge, the respondent paid him for his training and that his training certificate was mailed to him (Tr. 10).

Mr. Bentley confirmed that sometime during the period of November 7 to December 3, MSHA conducted a mine inspection, inspectors were there periodically, and that at least on one occasion as a result of a complaint about certain mine roof and rib conditions (Tr. 12).

Mr. Bentley stated that the day before his discharge he was having an electrical problem with the wiring in his home which necessitated his taking off work. He indicated that he and his wife called the mine and advised them of this, and the next day when he reported for work he was fired by Mr. Larry Wright, the mine superintendent. Mr. Wright told him that he was firing him because he missed too much work (Tr. 17).

Mr. Bentley indicated that MSHA's mine inspections may have resulted in some citations being issued, or at least an order to correct certain roof and rib conditions. He also indicated that he performed some roof bolting work to correct some of the conditions. He identified one of the inspectors who participated in the inspection as Rob Fleming, and stated that Mr. Fleming is a friend and neighbor who he had known for some four years. Mr. Fleming was the regular MSHA inspector assigned

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to the mine, and Mr. Bentley recalled one past incident when Mr. Fleming was at the mine when Mr. Bentley could not make it because of heavy snow, and Mr. Fleming asked some of the miners about the whereabouts of "his neighbor" (Tr. 19).

Mr. Bentley testified that he never mentioned the training incident to Mr. Fleming. He also indicated that Mr. Fleming was not the inspector who may have inspected the roof and rib conditions which he worked on, but that Mr. Fleming was involved in the inspection of a loader that another miner had reported (Tr. 21).

Mr. Bentley confirmed that Larry Wright never said anything to him that would lead him to believe that Mr. Wright suspected him of being the person who complained to MSHA inspectors. However, Mr. Bentley stated that loader operator Warren Bentley, who is not related to him, told him that "they said that I was the one that called the inspectors on them, and they was going to get rid of me" (Tr. 22). Mr. Bentley testified further that after he was discharged, Warren Bentley told him that Larry Wright had said that "he (complainant) was the one that called the inspectors and they was going to have to get rid of me. Or, something pertaining to that" (Tr. 23).

Mr. Bentley stated that during his period of employment with the respondent he "got along good" with Mr. Wright (Tr. 24). He also confirmed that subsequent to his discharge he applied for and received unemployment benefits (Tr. 26). Mr. Bentley stated further that he filed his discrimination complaint because he felt that Mr. Wright believed that he had complained to the inspectors and fired him over it to get back at him (Tr. 27).

Mr. Bentley testified when Mr. Wright fired him he told him that he would have to let him go for missing too many days. Mr. Wright made no mention about any complaints, and there was no discussion about any "rumor" that Mr. Bentley may have been the person who complained to the inspectors. Mr. Bentley confirmed that he said nothing to Mr. Wright at that time and simply left the mine (Tr. 29). Mr. Bentley also confirmed that he was paid two salary checks which he had coming and indicated that the respondent had always paid him for his work and that he never had any trouble over pay (Tr. 30). He also confirmed that Mr. Wright came to his house and personally paid him for the day of training in question, but that they did not discuss his discharge and Mr. Bentley never spoke with again about getting his job back (Tr. 31).

On cross-examination, Mr. Bentley confirmed that he worked as a roof bolter, and also did some work as a shuttle car operator. He confirmed that he is an experienced miner, and that his roof bolter's job is an important job at the mine (Tr. 33). He confirmed that the training in question was given by a private company off mine property, and that company is responsible for certifying that he received the training. He also confirmed that the training issue is no longer a part of his present complaint (Tr. 35).

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Mr. Bentley believed that the inspection which resulted from the complaint filed with the MSHA inspectors took place sometime in November, and that no one said anything to him about the inspection. He confirmed that he continued working at the mine through the month of December following that inspection, and up to the time when he was discharged (Tr. 37). He confirmed that mine management never complained about his work, that the working conditions "were pretty good", and that he never felt that the day-to-day operations of the mine endangered his life. He did not know whether any citations were ever issued while he was on the job (Tr. 38-39).

Mr. Bentley stated that mine management never threatened to fire him over his work habits, and he denied that management had ever mentioned the fact that they could not tolerate his missing work (Tr. 40). He also denied that he had several absences subsequent to the inspection which prompted the "rumor" that he was the one who had complained, and was not fired (Tr. 41). He did confirm that he had two days of sick leave for which he had a doctor's excuse, and he estimated that he only missed work for a total of six days during his employment with the respondent, but denied that he ever missed four days' in a row in November or any other time (Tr. 43). He stated that "I never took off nary day without calling" (Tr. 43). He also indicated that when he did take off work, he would call in the morning of the day he was off, and the calls would usually be made at 6:00 a.m. He also confirmed that there were one or two days when he left work early due to inclement weather, but was still paid for a full shift, and he "guessed" that this was after the inspection in question. He confirmed that the respondent "was a good company to work for", that management never asked him to perform any dangerous work, had never made any abnormal demands to him as an employee, never threatened him for reporting safety infractions to MSHA. He also confirmed that the respondent "ran a good mine", had a good safety record, that "it was one of the best places I ever worked", and that he had "no reason to call the inspectors on them" (Tr. 46).

In response to one of my questions concerning his discrimination complaint, Mr. Bentley responded as follows (Tr. 48-49):

Q. Mr. Bentley, if this company is so great to work for, and they were an enlightened employer, with a good safety record, and they treated you fine, and they paid you well, and they paid you even a couple of days when you went home early because of weather or what-have-you; what leads you to conclude -- why did you -- why do you put any stock in these rumors that they got you because they feel you were the guy that blew the whistle on them?

A. Well, that's just the way --

Q. You just feel that way?

A. Yes. Just the way everything looks to me.  
I don't know. You know, just the way everything looks to me.

Q. \* \* Other than the rumor that you had heard, was there anything concrete, or anything that you can put your finger on as to --

A. No.

Q. Do you know of any other employees out there that have filed complaints, that have been treated the same way you have?

A. No.

Q. Or, the way you claim to have been treated here.

A. See, I wasn't going to file any complaint against them.

Q. You weren't going to do what?

A. I wasn't going to file a complaint against them.

Mr. Bentley explained that when he initially went to the MSHA office after his discharge, his intent was to try to find out the identity of the miner whose complaint prompted the inspections which he believed triggered his discharge. He assumed that he could find out who complained, and that he could then go to Mr. Wright and inform him that it was not him (Tr. 50). Mr. Bentley also explained that while at the MSHA office "they said I probably had a pretty good case against them" and that the "MSHA people" talked him into filing his discrimination complaint against the respondent. He confirmed that MSHA would not tell him who filed the safety complaint against the company, and that other than the letter he subsequently received from MSHA advising him that MSHA's investigation of his discrimination complaint did not disclose any violation by the respondent, he was never specifically advised as to why MSHA concluded that the respondent had not discriminated against him (Tr. 49-50). He did not know whether Inspector Fleming participated in his discrimination investigation, nor does he know whether any investigators went to the mine to speak with anyone there (Tr. 52). He confirmed that Warren Bentley no longer works at the mine (Tr. 53).

Warren Bentley, testified that he first contacted Larry Wright at the mine while looking for a job, and that Mr. Wright told him that Roger Bentley was missing work and that he (Wright) may have to lay him off, and that if he did, he (Wright) would hire Warren. Mr. Bentley confirmed that during that conversation with Mr. Wright, Mr. Wright made some mention of the fact that he was having "trouble" because someone had "called the inspector" (Tr. 55). Mr. Bentley confirmed that

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he quit his job with the respondent on November 20, 1981, to go to work for another coal company, but that he became dissatisfied with his new job and contacted Mr. Wright to get his old job back, and that is when the purported conversation took place (Tr. 56). He did not go back because Mr. Wright was looking for a roof bolter, and Mr. Bentley did not like to roof bolt (Tr. 58).

Mr. Bentley indicated that at the time he worked at the mine, some 15 miners worked there, and he confirmed that Robert Fleming was the MSHA inspector assigned to the mine in question (Tr. 60). He also confirmed that he had "heard" that someone had complained to an inspector sometime in November about someone getting hurt, but that no one knew who had complained (Tr. 62). When asked whether he had ever told the complainant that Mr. Wright believed the complainant called in the inspector's and that was why he was fired, Mr. Bentley stated as follows (Tr. 66-68):

Q. Did Mr. Wright ever say anything to you, either directly, or indirectly, that he knew who had called the Federal inspector on him, and that the next time that fellow fouled up, he was going to get rid of him?

A. Not that I recall.

Q. Why would Mr. Rogert Bentley, sitting right here next to you at that table, say that you made that statement, then?

A. I don't have any idea.

Q. You never told Roger Bentley that Mr. Wright had said to you that he knew --

A. Now the only thing -- I'll put it to you, I understand what you are getting to -- I told him, I said, he was talking to me about it, and I told him, I said, well, it soulds like, you know, that -- me and him both was together, just talking like me and you would meet up friends -- and I said, well, it kinds sounds like that maybe that's it. But, now as far as definitely stating, uh-uh.

Q. Did you hear from any of the other members -- any of the other miners, rather -- or any of the crew men out there, was there any rumor going around the mine that Mr. Wright knew who had complained, and who had called the Federal inspectors out there, and that Mr. Wright was going to see to it that the next time the fellow that did it, was going to get it?

A. No, for I wasn't back -- when I quit him, I wasn't back to the mines but one time. I went up there to get my W-2 forms, and that's the only time. In fact, I went to his house, I think, to get them, I believe.

Q. Have you ever known Mr. Roger Bentley to file any complaints with MSHA, or to complain about safety conditions, or that sort of thing?

A. Not since I have known him.

Q. Do you have any idea who complained about the conditions at the mine that caused the inspector to go there in November?

A. I don't know (INAUDIBLE).

Mr. Bentley stated that there is no mine safety committee, and that if anyone had a safety problem they would go to Mr. Wright, mine owner Wampler, or foreman Ernest Mullins, and that Mr. Mullins would take care of the problem (Tr. 70). In response to further questions, Mr. Bentley stated that the respondent always treated him fairly, and he confirmed that he was not at the mine when the complainant was discharged (Tr. 73). He also indicated that mine management never threatened him for complaining about safety matters, and did as was expected to take care of such problems (Tr. 76).

After the testimony of Warren Bentley, the complainant indicated to me that he did not wish to pursue the matter further, and his reason for this was his belief that Warren Bentley's testimony was contrary to what Mr. Bentley had previously told him. The complainant indicated that he filed his discrimination complaint on the basis of Warren Bentley's prior statement that Mr. Wright told him that he had fired the complainant because he believed that his complaint to the inspector had prompted the mine inspection (Tr. 77). In view of the fact that Mr. Wright was present for testimony, the complainant's request not to pursue the matter further was denied (Tr. 77).

#### Respondent's testimony and evidence

Larry Wright testified that he is the mine superintendent and that he also has an ownership interest in the mine. He indicated that mine foreman Ernest Mullins takes care of the day-to-day operation of the mine, and that he (Wright) spends half his time underground. He confirmed that the complainant was hired on September 15, 1981, and that the only problem he had with him was that he missed work. He confirmed that the complainant Roger Bentley was a good roof bolter and worker, and that from the time he was hired he began missing work "one or two days a week". Since the roof bolter is important to his mining operation, this



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necessitated finding a replacement for him when he missed work, and he would have to reassign another miner to that job, and that he did not believe that this was a good safety practice (Tr. 81-83).

Mr. Wright confirmed that the complainant was terminated on January 6, 1982. Upon review of his personnel records, he confirmed that the complainant worked a total of 70 days before his discharge and that he was absent from work a total of 11 full work days during that time (Tr. 84). In addition, he confirmed that his records reflect that the complainant worked two hours one day, four hours another day, and went home, but was paid a full days' wages. There were an additional two days in which he did not put in a full day, and the total time beyond the 11 days which he did not complete a full days' work was four days (Tr. 85).

Mr. Wright testified that he never accused the complainant of instigating any MSHA inspection and he identified the miner who did as Tammer Waggoner. He stated that the complaint was over a bad top and ribs, and when the inspectors came to the mine the complainant was not there. Some of the miners concluded that since the complainant was not at work that he was the one who called in the inspectors. In fact, Mr. Wright stated that Mr. Waggoner came to him and told him that the mine would be inspected that day, and he confirmed that the inspectors did in fact issue a citation which required some overhanging ribs to be cut down, and compliance was immediate. He confirmed that Mr. Waggoner is still employed at the mine. Mr. Wright denied that he ever made a statement that he would fire the complainant for having complained to the inspectors, and stated "I never fired nobody over that. That's their own right" (Tr. 87-88).

Mr. Wright testified that he told the complainant that his missing work was causing him problems and that if he continued he would have to do something about it. He also informed the other miners about this and indicated that it was becoming costly and expensive, and he also indicated that absenteeism was not a problem at that time, but in the past it was a problem (Tr. 89). He confirmed that present mine policy is to terminate miners if they consistently miss work (Tr. 89).

Mr. Wright identified the inspectors who conducted the inspection which resulted from Mr. Waggoner's complaint as Carl Smith and Reed Castle, and that Inspector Fleming was not with them. He also confirmed that Mr. Fleming had never complained to him about any miner complaints over safety (Tr. 90). Mr. Wright also confirmed that loader operator Johnny Ison was injured in a rib roll, but that this occurred a week before the MSHA inspection in question. He denied ever telling Roger Bentley that he fired the complainant because of any complaint to an inspector, and he denied ever telling Roger Bentley that he would hire him because the complainant was missing work. He did confirm that Warren Bentley called him three or four weeks after he quit trying to get his job back, but that he informed him that he had already hired a loader operator but would consider him for

a repairman's job if anyone quit (Tr. 91).

Mr. Wright confirmed that MSHA and state inspectors routinely inspect the mine, that he has never had any problems with them, and that it did not bother him if any employee saw fit to complain to any inspector or to report him to MSHA (Tr. 92).

In response to bench questions, and after referring to his attendance records, Mr. Wright detailed the specific days on which the complainant missed work. He testified that out of a total of 11 days of missed work, he could only recall one day on which the complainant called to inform him he would not be at work. On that day, the complainant called him and told him he had his truck stuck in a ditch and would be late, but he never showed up at all (Tr. 95).

Mr. Wright confirmed that it was possible that the complainant called someone else at the mine on the days he did not show up for work, but he also confirmed that his pay was docked for the 11 days he was absent. He also stated that mine policy is such that miners are only paid for the days they work, and even if they bring a doctor's excuse, they are not paid. However, in such circumstances, it would be an excused absence (Tr. 95-96). A miner would not be paid if he could not get to work because of road conditions (Tr. 98).

Mr. Wright stated that he has fired other miners for absenteeism, and that he considered the 11 days which the complainant missed to be excessive absenteeism, and that he had spoken with the complainant about the matter before he dismissed him, and that he had warned him a week or so before his dismissal (Tr. 100). He denied that the complainant ever called him about the problems with his house wiring (Tr. 100), and he confirmed that he spoke with mine owner Wampler before discharging Mr. Bentley, and stated Mr. Wampler is his (Wright's) uncle.

Mr. Wright stated that he did not know that Inspector Fleming was a neighbor of the complainant, and Mr. Fleming never mentioned that fact to him (Tr. 102), and that he found out that this was true after the discrimination complaint was filed (Tr. 103). Mr. Wright also related that he employs 14 or 15 miners, that absences cause production problems and are costly to his mine operation, and that when the complainant missed work someone had to replace him (Tr. 105). He also indicated his safety concern over replacing an experienced bolter such as the complainant with someone who is not as experienced (Tr. 106).

The complainant was given the opportunity to call Mr. Wampler as a witness, but declined to do so. The complainant indicated that the only reason he filed his complaint was that Warren Bentley told him he had been fired for complaining to the inspectors. When asked why Warren Bentley would make such a statement, the complainant stated that he did not know. Further, while he has known Warren Bentley for four years, he "never had that much dealing with him", but that he had heard others say that Warren Bentley was known to exaggerate or take things out of context (Tr. 108).

Mine operator Larry Wampler was called as the Court's witness, and he confirmed that the mine rules were that "anybody that didn't work regular, we had them terminated" (Tr. 109). Mr. Wampler confirmed that Mr. Bentley missed eleven days of work when he was employed at the mine, and could only recall one phone call which he received from Mr. Bentley at his home advising him that he couldn't come to work. Mr. Wampler stated that he did not discuss the absences with Mr. Bentley, and he left such matters to Mr. Wright (Tr. 111).

Mr. Wampler denied that Mr. Bentley was discharged for complaining to MSHA, and stated that he was terminated for "irregular work" (Tr. 112). Mr. Wampler stated further that the mine employs 14 to 16 miners, that it is a non-union mine with daily production of 200 to 400 tons, five days a week (Tr. 113). He also indicated that personnel turn-over at the mine is not a problem (Tr. 113). He confirmed that he is a "working owner" at the mine, but that Mr. Wright "runs the show", with full authority to hire and fire employees. To his knowledge, Mr. Wright has never fired a miner for reasons other than missing work, and he had no knowledge that Mr. Bentley had ever complained to MSHA inspectors about the mine (Tr. 114).

Complainant produced his payroll check receipts covering his employment period September 18, 1981 through January 1, 1982, and by agreement of the parties, copies were made a part of the record and the originals were returned to Mr. Bentley (Tr. 116). When asked if he disputed Mr. Wright's references from respondent's payroll records indicating that he had missed eleven days of work, Mr. Bentley said that he questioned one day when the loader was down on November 6th. He confirmed that he took off the following day, November 7, when "they said the loader was down" (Tr. 117).

#### Findings and Conclusions

In order to establish a prima facie case a miner must prove by a preponderance of the evidence that: (1) he engaged in protected activity, and (2) the adverse action was motivated in any part by the protected activity. Secretary of Labor on behalf of David Pasula v. Consolidation Coal Co., 2 FMSHRC 2786 (October 1980), rev'd on other grounds sub nom., Consolidation Coal Co. v. Marshall, 663 F.2d 1211 (3d Cir. 1981). It is clear that a miner has the right to file a safety complaint or to summon MSHA inspectors to the mine site for an inspection if he believes that safety hazards exist in his work environment. It is clear that any retaliation by the mine operator against the miner for making any safety complaints is a violation of the Act.

Complainant Bentley claims that he was fired by Mine Foreman Larry Wright because Mr. Wright believed that Mr. Bentley had complained to an MSHA inspector about certain safety conditions at the mine. Mr. Bentley's "belief" concerning Mr. Wright's motivation for discharging him is based on what he was purportedly told by former employee Warren Bentley after the discharge. Warren Bentley purportedly told the complainant that he had heard

that Mr. Wright fired him because he believed that the complainant had complained to an MSHA inspector about certain safety conditions at the mine.

In a recent case decided by the Commission on August 31, 1982, it was held that a miner is protected from retaliatory discharges by a mine operator even "for the suspected exercise of a statutory right", *Elias Moses v. Whitley Development Corporation*, 4 FMSHRC 1475 (1982). In that case, the Commission stated at 4 FMSHRC 1480, that "the complainant establishes a prima facie case by proving that (1) the operator suspected that he had engaged in protected activity, and (2) the adverse action was motivated in any part by that suspicion".

In the instant case, the respondent mine operator contended that the complainant was discharged for absenteeism, and in support of this defense presented the testimony of Larry Wright, the mine foreman who fired Mr. Bentley. Mr. Wright had with him at the hearing his attendance records for the miners working at the mine during the time in question, and that those records, coupled with Mr. Wright's testimony, establish to my satisfaction that Mr. Bentley was absent from work for a total of 11 days during his tenure at the mine. Further, with the exception of one instance when Mr. Wright recalled a telephone call from Mr. Bentley at his home, respondent established through the credible testimony of Mr. Wright, that Mr. Bentley did not advise mine management that he would be absent from work and this necessitated a replacement for him. For a small mine operation such as that carried out by the respondent, this presented a problem for management since Mr. Bentley was a skilled roof bolter whose presence at the mine was crucial.

Although the complainant denied that he had been warned about his absenteeism, I find Mr. Wright's testimony that he cautioned Mr. Bentley about his absences and warned him that he could be terminated if he continued missing work to be credible. Further, aside from the discharge, there is no evidence that mine management treated Mr. Bentley badly or that he was ever harrassed or intimidated for exercising any protected rights during his rather short employment tenure at the mine. As a matter of fact, Mr. Bentley conceded that the mine operator treated him fairly, paid him well, and that the mine was a good place to work.

Complainant subpoenaed Warren Bentley to testify in his behalf at the hearing. Warren Bentley no longer works at the mine in question, and he denied that he ever told the complainant that mine foreman Wright had told him that he fired the complainant because of his belief that the complainant had complained to an MSHA inspector. The inspector in question is a neighbor of the complainant's, and the complainant surmized that foreman Wright may have believed that this impacted on Mr. Wright's asserted "belief" that the complainant may have told the inspector about certain unsafe roof conditions at the mine.

No MSHA inspector was called by the complainant to testify in his behalf. Further, the complainant states that when he visited MSHA's district office after he was fired, he did so in an attempt to learn the identify of the individual who may have complained to the inspectors. The complainant asserted that

while MSHA would not reveal the identity of the person who may have complained, someone in MSHA's district office suggested that the complainant filed a discrimination complaint and helped him fill out the necessary paperwork.

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Mr. Wright denied that he fired the complainant for filing any complaints, and he denied ever telling Warren Bentley that he suspected the complainant. As a matter of fact, Mr. Wright testified that he knew who had complained, identified him for the record, and indicated that he was still employed with the company. This testimony was not rebutted by the complainant.

I conclude and find that on the basis of the preponderance of the evidence in this case, respondent has established that it discharged Mr. Bentley for absenteeism, and there is no credible evidence to support a conclusion or finding that mine foreman Larry Wright suspected or knew that Mr. Bentley had filed any safety complaints and fired him for that reason rather than for missing too much work. In short, I cannot conclude that Mr. Wright fired Mr. Bentley because of any belief that he had exercised a protected right to file safety complaints.

The question concerning Mr. Bentley's first aid training and the receipt of a certificate for that training is not an issue in this case. The record shows that Mr. Bentley was paid for the day of training and that he apparently received the certificate from the company who provided the training.

#### ORDER

In the view of the foregoing findings and conclusions, and after careful consideration of all of the evidence and testimony adduced in this case, I conclude and find that the respondent did not discriminate against Mr. Bentley, and that his rights under the Act have not been violated. Accordingly, his discrimination complaint IS DISMISSED.

George A. Koutras  
Administrative Law Judge