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MICHEAL YOUNG V. TERRY GLEN COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

MICHAEL D. YOUNG, COMPLAINANT	DISCRIMINATION PROCEEDING
	Docket No. KENT 83-126-D
v.	
	MSHA Case No. BARB CD-83-08
TERRY GLEN COAL COMPANY, RESPONDENT	Barn Branch Mine

DECISION

Appearances: Michael D. Young, Grundy, Virginia, pro se
Randall Scott May, Esq., Craft, Barret & Haynes, Hazard, Kentucky, for Respondent

Before: Judge Steffey

Pursuant to an order consolidating issues and providing for hearing issued September 8, 1983, as amended on September 26, 1983, a hearing in the above-entitled proceeding was held on November 1, 2, and 3, 1983, in Jonesville, Virginia, under section 105(c)(3), 30 U.S.C. 815(c)(3), of the Federal Mine Safety and Health Act of 1977.

The complaint was timely filed on February 7, 1983, under section 105(c)(3) of the Act after complainant had received a letter dated January 11, 1983, from the Mine Safety and Health Administration advising him that its investigation of his complaint had failed to show that a violation of section 105(c)(1) of the Act had occurred. The complaint alleged that complainant was discharged by respondent on November 19, 1982, in violation of section 105(c)(1), because complainant had complained about the condition of the conveyor belts which were used by respondent to transport miners into its mine. The complaint also alleged that respondent wished to discharge complainant because respondent feared that he might report the unsafe conveyor belts to MSHA.

After the parties had completed their presentations of evidence and had made their concluding arguments, I rendered the bench decision which is reproduced below (Transcript dated November 3, 1983, pages 3 through 28):

The issues in this case are whether there was a violation of section 105(c)(1) of the Federal Mine Safety and Health Act of 1977 and, if so, whether Mr. Young, the complainant, is entitled to the relief he seeks under section 105(c)(3) of the Act.

Findings of Fact

Based on the demeanor of the witnesses and the credible evidence in this proceeding, the following findings of fact are made:

1. The complainant in this proceeding, Michael David Young, is 27 years of age. He attended Grundy Senior High School up to the eleventh grade, at which time he quit and joined the United States Navy. Before leaving high school, he had taken a 1-year trade school course in welding. While he was in the Navy, he received a certificate dated July 19, 1974, showing that he had completed a course in basic electricity and electronics (Exh. 4). He also holds certificates of competency issued by the Virginia Board of Examiners certifying his ability to act as a certified underground shot firer and an electrical repairman (Exh. Nos. 2 and 3). Additionally, he has currently dated cards issued by MSHA showing he is a certified underground electrician, certified surface electrician, and certified underground and surface high voltage electrician (Exh. Nos. 6, 7, and 8). Young has 5-1/2 years of mining experience of which 4-1/2 years were obtained while he was performing maintenance work on underground and surface electrical equipment. Young is currently working as an electrical repairman for Island Creek Coal Company and is attending Southwest Virginia Community College studying electronics technology.

2. Young was working for Island Creek Coal Company in 1982, but was laid off in September 1982 when Island Creek found it necessary to reduce its work force by 800 people. Island Creek's personnel manager received an inquiry from Sidney Fee about an electrical repairman and recommended Young. Thereafter, Young was interviewed by Sidney Fee, who works as general manager for Terry Glen Coal Company. Terry Glen's Barn Branch Mine is located near Crummies, Kentucky. Young was then living in Buchanan County, Virginia, with his wife and one child. Fee hired Young for a 30-day probationary period. If Young's work proved to be satisfactory, Young planned to move his family about 100 miles to the Crummies, Kentucky, area. During the 30-day probationary period, Young was not a member of the Southern Labor Union, which is the miners' representative at the Barn Branch Mine. At the end of the 30-day period, if Young's work had proven to be satisfactory, he would either have been given a position as a salaried or management employee, or a position as a wage employee. It was understood that Young would join the Southern Labor Union if he became a wage employee.

3. During the interview by Sidney Fee, before Young was hired as a probationary employee, Fee asked Young if he had had experience repairing a Wilcox continuous-mining machine. Fee understood Young to say that he had worked on a Wilcox Model 21 continuous miner for about 2 weeks, whereas Young believes he explained to Fee that he had had enough experience in repairing Joy continuous-mining machines and other types of equipment to enable him, without difficulty, to adapt to repairing what Young referred to as the relatively simple components of a Wilcox continuous miner. As a matter of fact, Young had had no experience at all in repairing Wilcox continuous-mining machines when he began working for Terry Glen on November 10, 1982.

4. In order to save Young the time and expense of the 3-hour one-way drive from Terry Glen's mine to Buchanan County, Virginia, Fee provided Young with living quarters in a building owned by Terry Glen. Young was not charged for those living quarters.

5. Young began working for Terry Glen on Wednesday, November 10, 1982, and was discharged on Friday, November 19, 1982. Since Young did not work on Saturday or Sunday, he was employed by Terry Glen for only 8 working days. Young performed some work on the surface of the mine on Wednesday and Thursday, November 10 and 11, consisting of cutting off old bits and welding new bits on some augers for a Wilcox continuous-mining machine. Young's first trip underground occurred on Friday, November 12, 1982. He was shown how to ride the conveyor belt into the mine on that day and was given an opportunity to familiarize himself with the operation of a Series 21 Wilcox continuous-mining machine. Young had set timbers in the vicinity of a Series 20 Wilcox continuous-mining machine while employed by another coal company, but he did not perform any work on the Series 20 machine. There are no significant differences in the way a Series 20 operates as compared with the Series 21 used in Terry Glen's mine.

6. On Monday, November 15, 1982, Young went underground with Johnny Mack White, a certified maintenance foreman, to install some shims on a motor which had burned out on a Wilcox continuous miner. The new motor had been installed, except for inserting the shims behind the motor, and all work replacing the motor had been performed by a repairman named Robert Housley who worked from 11:45 p.m. to 7:45 a.m. Housley showed Young where the shims had to be placed and went on out of the mine. Housley did not remain to assist in installing the shims because Housley had been told that Young was an experienced repairman. Young had never installed a new motor on a Wilcox continuous-mining machine. Therefore, the shims were actually installed by White, but Young claimed credit for having thought of loosening the bolts so that the shims could be inserted. Housley claimed,

however, that he had deliberately left the motor loose so that the shims could be inserted without loosening any bolts.

7. On Tuesday, November 16, 1982, about 1:30 p.m., Young was asked by the mine superintendent, Steven Teshon, to go underground for the purpose of trouble shooting, or determining whether another motor had burned out on the Wilcox continuous-mining machine. Coal had been coming out on the belts which made it impracticable to ride into the mine on the belts, so Young rode into the mine on a scoop to determine what was wrong with the other motor on the Wilcox miner. Young was given an ohmmeter by Teshon before going underground, but Young did not take the ohmmeter to the continuous-mining machine and did some taping of lead wires and some brief energizing or "bumping" of the motor, which caused the circuit breaker to trip out. Young spent about 40 minutes to determine that the motor was burned out and needed replacement. The continuous-mining machine's operator, Wilburn Hale, and a roof bolter, Randy Evans, were present while Young was doing the trouble shooting, and both of them believed that Young should have been able to use an ohmmeter and determine in just a few minutes that the motor was burned out, as they had already assumed on the basis of their experience in working around and operating a Wilcox continuous-mining machine.

8. On Wednesday, November 17, 1982, Young went into the mine with Charlie Bumgardner (now deceased) and Johnny Mack White to complete installation of the second motor on the Wilcox continuous-mining machine, but Young's light battery became caught on a portion of the No. 2 belt conveyor which caused the light to go off. By the time Young had gone back out of the mine to obtain a replacement light and had started back to the face area, he met White returning to the surface. Young also turned around and went back to the surface because White advised him that the work of installing the second motor had been completed.

9. While Young was on the surface obtaining a replacement light on Wednesday, November 17, as explained in Finding No. 8 above, he was asked by Teshon to crawl along the No. 1 belt and determine what had caused some belt structures, being transported into the mine, to become stuck on the No. 1 belt, which only extends about four breaks into the mine before it terminates at the No. 2 belthead. The No. 1 belt had been stopped by an employee named Charles Hatmaker when Hatmaker realized that the belt structures had been caught between his location at the No. 2 belt drive and the mine surface. Hatmaker's assignment at that time was the transfer of belt structures from the No. 1 belt to the No. 2 belt. Another employee named William Caldwell was helping Hatmaker move belt structures from the No. 1 to the No. 2 belt, and Caldwell was asked to crawl toward the outside or surface of the mine while Young was crawling in the opposite direction from the surface. Caldwell came to the stuck belt structures

before Young. After Young had joined Caldwell at the point of obstruction, they succeeded in releasing the stuck belt structures, and both miners then crawled back into the mine along the No. 1 belt toward the No. 2 belthead with Young preceding Caldwell into the mine.

10. Young was welding augers for the Wilcox continuous miner on the surface on Thursday, November 18, 1982, when the mine superintendent, Teshon, advised Young that he was going to terminate Young's probationary position at the end of the shift on the next day, November 19, 1982, because Young was not competent in performing repairs on the Wilcox continuous-mining machine.

11. On Friday, November 19, 1982, Young returned to the mine before 7 a.m. and engaged in some discussions with other miners about the fact that he believed Teshon, the mine superintendent, was actually discharging him because he criticized the safety of riding in and out of the mine on the conveyor belts. None of the other miners agreed with Young that riding the belts exposed them to any hazard. When Teshon arrived at the mine, Young asked Teshon if he was still fired. When Teshon answered that question in the affirmative, Young stated that Teshon's real reason for discharging him was for his having made complaints about the safety features of the belt.

12. Teshon denied that he had ever said anything on Thursday when he told Young he was being discharged, that he was afraid Young might get hurt on the belt. Teshon agrees that he refused to allow Young to use the phone to call MSHA to request a special inspection of the belt conveyors, because of the threats Young was making, and that he ordered Young to leave mine property.

13. After Young left mine property, he drove to the office of Terry Glen's general manager, Sidney Fee, at Crummies, Kentucky. Young told Fee that Teshon had discharged him because Teshon was afraid Young would get hurt on the belts. When Fee advised Young that Teshon had given Fee his reasons for discharging Young and had stated that those reasons appeared to be valid so that Fee was supporting the discharge, Young became angry and said he would cause Fee and Fee's son trouble. Fee told Young to leave his son, Wayne, who is the mine's safety director, out of the discussion.

14. When Young was unsuccessful in getting Fee to reverse Teshon's discharge, Young proceeded to Harlan, Kentucky, and requested under section 103(g) of the Act that MSHA make a special inspection of the belt conveyors at Terry Glen's Barn Branch Mine, especially from the standpoint of their use as a means of transporting miners in and out of the mine.

15. MSHA sent Inspector Lester Reed and a trainee named Lawrence Rigney to make a special investigation in response to Young's request, and they rode the belts into the mine and wrote no citations or orders with respect to the use of the belts for haulage of miners. They inspected the pull cords and other features of the belts, but cited no violations of the regulations. While they were there, they inspected other areas in the mine and wrote five citations for violations of 30 C.F.R. | 75.400, 75.503, 75.1722, 75.1101-1, and 75.514. Only th alleged violation of section 75.1722 was considered to be a significant and substantial violation, as that term has been defined by the Commission in National Gypsum Company, 3 FMSHRC 822 (1981).

16. A Kentucky State Inspector named James E. Gilbert had been inspecting the Barn Branch Mine for about 5 years, including the short time during which Young worked for Terry Glen, and he has not written or seen violations cited for clearances of the belt for purposes of transporting miners. He has ridden into the mine on the belt. Gilbert testified that the required clearance of 18 inches between the top of the belt and the mine roof is the same under both Kentucky and Federal regulations.

17. Young contends that he had made complaints to management about the unsafe aspects of riding the conveyor belts into the mine. The unsafe conditions which Young claims existed were: (1) there was less than the required 18 inches of space between the top of the belt and the mine roof, (2) there was a practice at the mine of having the miners jump from one belt to another without stopping the belt at the time of the transfer, or even having the miners get off one belt before jumping on to the next belt, and (3) there were inoperable pull cords running along the conveyor belts.

18. Without exception, all the witnesses called by Young and Terry Glen's counsel stated that the clearance between the top of the belt and mine roof was 18 inches or more, that they did not jump from one belt to another without getting off one flight before getting on another flight, and that any inoperable pull cords were immediately repaired because their failure to work could be corrected simply by reattaching them to the toggle switches to which they are attached until a rock or some other object hits them and knocks them loose so as to make reattachment necessary.

Consideration of Young's Arguments

Young was given several months, on two different occasions, to obtain an attorney to represent him in this proceeding. He was ultimately unable to secure legal representation, although it appeared for a short time on two different occasions that he had been successful in retaining a lawyer to represent him.

Young, therefore, had to represent himself at the hearing and succeeded very well in presenting his case. His primary argument is that he made complaints to management about the hazardous nature of the practice of having miners ride to and from the working faces on conveyor belts. Young contends, therefore, that he was engaged in a protected activity under section 105(c)(1) of the Act which provides as follows:

> (c)(1) No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner, representative of miners or applicant for employment 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, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this Act.

The test for determining whether a complainant has shown a violation of section 105(c)(1) of the Act was given by the Commission in Pasula v. Consolidation Coal Co., 2 FMSHRC 2786 (1980), rev'd on other grounds sub nom., Consolidation Coal Co. v. Ray Marshall, 663 F.2d 1211 (3d Cir. 1981). Some of the Commission's language pertaining to the burden of proof was temporarily reversed in Wayne Boich d/b/a W. B. Coal Co. v. F. M. S. H. R. C., 704 F.2d 275 (6th Cir. 1983), but thereafter the court vacated its decision reported at 704 F.2d 275, except for its rulings as to back-pay issues, in Wayne Boich d/b/a W. B. Coal Co. v. F. M. S. H. R. C., ____ F.2d ____, Sixth Circuit No. 81-3186, October 14, 1983, leaving intact the Commission's rationale regarding the requirements for proving a violation of section 105(c)(1) of the Act. The test set forth by the Commission in Pasula reads as follows (2 FMSHRC at 2799-2800):

> We hold that the complainant has established a prima facie case of a violation of section 105(c)(1) if a preponderance of the evidence proves (1) that he engaged in a protected activity, and (2) that the adverse action was motivated in any part by the protected activity. On these issues, the complainant must bear the ultimate burden of persuasion. The employer may affirmatively defend, however, by proving by a preponderance of all the evidence that, although part of his motive was unlawful, (1) he was also motivated by the miner's unprotected activities, and (2) that he would have taken adverse action against the miner in any event for the unprotected activities alone. On these issues, the employer must bear the ultimate burden of persuasion. It is not sufficient for the employer to show that the miner deserved to have been fired for engaging in the unprotected activity; if the unprotected conduct did not originally concern the employer enough to have resulted in the same adverse action, we will not consider it. The employer must show that he did in fact consider the employee deserving of discipline for engaging in the unprotected activity alone and that he would have disciplined him in any event. [Emphasis in original.]

Johnny Mack White was Young's immediate supervisor and he said that Young may have said something to him about not wanting to ride the No. 1 belt, and about preferring to crawl the initial distance of about four breaks, or approximately 300 feet, that the No. 1 belt extended into the mine. White, however, stated that Young had not mentioned to him that the pull cords for stopping the belts failed to work and White denied that Young had ever mentioned to him anything about measuring the clearance between the belts and the mine roof. White additionally denied that he had reported to any of his superiors any alleged complaints made to him by Young.

Charles Hatmaker was not Young's supervisor, but was just another miner. He thinks he recalls having heard Young say that he was not going to ride the No. 1 belt any more. While one might conclude that Young's expression of fear of riding the No. 1 belt is the same as making a safety complaint, the attitude of White and Hatmaker, as to Young's fear of riding the belt, was considered by them to be more like an expression of a dislike for working in low coal, for example, than an expression of a safety complaint.

Young claimed to have found a sympathetic response to his alleged safety complaints when he discussed them with Luther Green III who was the safety man elected by the Southern Labor Union. Green is the only person who has ever reported having

had an accident while riding the belt, but Green said that his injury was the result of his own negligence, because he was on his knees while riding on the belt and looked behind him to say something to the miner behind him. When Green turned back to face the direction the belt was traveling, he was hit in the face and received a cut on the bridge of his nose which required a few stitches. Green missed the rest of that day at work because of the accident and doesn't consider the accident something that shows an unsafe belt conveyor.

Green, in the capacity of safety man, had not received any complaints from any of the miners as to lack of safety for riding the belts or for any other type of safety problem. Green said that on the Friday following the Thursday when Young was informed that he had been discharged, that Young angrily said to him, "You call yourself a safety director letting men ride these belts?" Green said he felt Young was so upset and argumentative at that time, that he just walked away to get his knee pads and made no attempt to answer Young's allegation.

Randy Evans testified that he told Young that Green was the union safety man on Friday morning, when Young mentioned the belts to him, after Young had been discharged. Evans also stated that the Barn Branch Mine was the safest mine in which he had ever worked. Moreover, Evans stated that Young told him that the real reason Teshon fired Young was that Teshon was afraid that Young would get Teshon's job.

Young contended there was a sign outside the mine to the effect that the belts were not intended to be used for mantrip purposes. Fee, the general manager, said the sign was old and applied at one time when the belt structures and crossbars in the first part of the belt entry did fail to provide 18 inches of clearance. But Fee says the crossbars near the surface were gradually removed until none exist there now and that a low profile 9-inch belt structure was also installed. Teshon additionally stated that they shot out some slag in the mine roof to open up the No. 2 belt so that miners could ride the belts all the way from the mine entrance to the face area, as shown on Exhibit A.

Wilburn Hale was the operator of the Wilcox continuous-mining machine and had run a Wilcox miner for a total of 13 years. Hale said he told the section foreman the motor in the Wilcox miner was burned out and needed replacing. Young was called to work on the machine and Hale was surprised at how little Young knew about checking motors and was especially critical of Young's failure to bring an ohmmeter to test the motor.

Robert Housley was a repairman at the Barn Branch Mine and was a certified foreman. He performed a preshift of all belt

flights on the night of November 17 during his shift, which lasts from 11:45 p.m. to 7:45 a.m. He checked all pull cords and found them to be operative. Housley's testimony rebuts or seriously erodes Young's claim that he tried to stop the No. 2 belt on November 17 by pulling the control cord running along the No. 2 beltline, but that the cord failed to stop the belt.

Sidney Wayne Fee was the safety director for the Barn Branch Mine. On one occasion, while Young was welding on the surface, Wayne Fee observed him and complimented Young for wearing safety glasses. Young agrees that he received a compliment, but Young does not even claim to have taken advantage of that opportunity to express his safety concerns about riding the belt.

My review of the evidence shows that at most, two miners recall that Young expressed a fear of riding the No. 1 belt and expressed a preference for crawling the 250- or 300-foot length of that belt, rather than riding it, because of his belief that there was inadequate clearance between that belt and some crossbars which still existed along the No. 1 belt at that time.

Therefore, to the extent that Young expressed a fear of riding the No. 1 belt, it may be said that he was engaged in a protected activity and that he may not be discharged for such activity if his discharge was motivated in any way by an expression of fear of riding the No. 1 belt.

When it is considered that the MSHA inspectors found no violations of the mandatory safety and health standards pertaining to transportation of miners on the belts when they made a special investigation at Young's request, it is unlikely that Teshon was motivated by Young's fear of riding the No. 1 belt when Teshon told Young he was being discharged for lack of competence to repair the Wilcox miner, especially since that was the primary reason Fee had hired Young in the first place.

Credibility

Young, of course, claims that Teshon first told him on Thursday he was being discharged because Teshon was afraid he would get hurt riding the belt. Young says that when he told Teshon on Friday morning that Teshon could not fire him for that reason, Teshon changed the basis for Young's discharge to be a claim that Young was not competent to repair the Wilcox continuous-mining machine being used at the mine.

Young claims that he could not find anyone to corroborate his account of the discharge, because all the miners are either afraid to tell what actually happened or they have family relationships which impede their willingness to tell what happened, such as the fact that Hatmaker is married to the general manager's daughter, and that the safety director is the general manager's son.

It is true that witnesses' economic dependency on their employer and kinship are factors to be examined when one is trying to evaluate credibility. Those relationships, however, do not seem to have had an adverse impact upon credibility in this proceeding because Hatmaker agreed that Young had expressed to him a dislike for riding the No. 1 belt and Wayne Fee stated that he had complimented Young for wearing safety glasses. Thus, the two witnesses with the closest kinship ties to the general manager gave favorable testimony in Young's behalf.

It is also true that all the witnesses, except the State inspector, who testified in this proceeding, still work for Terry Glen, but it must be kept in mind that Young only worked for Terry Glen for 8 days, excluding Saturday and Sunday, and the miners necessarily had little contact with Young and were not acquainted with him well enough to have heard his alleged views as to safety discussed in any detail. Therefore, it is understandable that they believed Young was opinionated and that they were aware of few facts which supported his contentions to the effect that his discharge was motivated because of his having made complaints about the hazards associated with riding the belt conveyors.

Moreover, Young's own credibility was eroded by the inconsistent statements he made and the claims he made which were rebutted or shown to be false. Young had a tendency, for example, to state whatever best supported his claims. On page two of the complaint he filed with MSHA, which is Exhibit 9 in this proceeding, he stated that the coal height was 30 to 40 inches in the mine. But at the hearing, he reduced the height to 27 inches.

He stated on page two of the complaint that he noticed the hazards of riding the belt when he first went underground on November 12, 1982, but he stated that he needed the job, so he avoided saying anything to Teshon at that time when Teshon stated to him that it was necessary to be able to ride the belt in order to work in the mines in that part of the country. Since Young only worked 8 days, he undoubtedly continued to need the job as much on the day he was discharged as he needed it on November 12 when he declined to make comments about safety. Therefore, it is more likely than not that Young's complaints about safety were all made after his discharge, rather than before, as most of the miners testified.

On page four of his complaint, Young stated that the clearance between the top of the No. 1 belt and the mine roof was 10 to 12 inches. At the hearing, he claimed to have actually measured the clearance and found it to be from 10 to 15 inches, but Caldwell testified that he was close behind Young

at the very time Young claims to have made the measurements and Caldwell did not see him take any measurements.

Young was inconsistent at the hearing about the time he had finished working in the mine on November 17, the day he helped remove belt structures from the beltline, saying first that he was back outside at 8:30 a.m. after getting his battery torn off and thereafter saying that it might have been 10:30 or 11 a.m. when he got outside.

Although Young did not challenge Teshon's claim that Teshon had given Young an ohmmeter to test the motor on November 16 on the Wilcox continuous-mining machine, Young first said he was not sure he had an ohmmeter and subsequently said that the ohmmeter gave him inaccurate readings and could not be relied on. On the other hand, all the miners working with him said that he did not use one at all, and they were positive he did not have one. In his deposition, Young stated on page 43 that the pull cord to stop the belt was on the right side when one is going into the mine, but at the hearing, he said the cord was on the left side when one was going into the mine. In view of the fact that Young made inconsistent statements about what happened while he worked at the Barn Branch Mine, I find that his credibility is not entitled to be given as much weight as that of Teshon who discharged him because Teshon's testimony is consistent in the details he gave.

I find that the real reason for Young's discharge was Teshon's belief that Young was not competent to repair the Wilcox continuous-mining machine. It is a fact that both Fee and Teshon believed that Young had misled them at the initial interview by telling them that he would have no trouble in adapting to the repair of a Wilcox continuous-mining machine, as he had worked around them and had been associated with them. Young admitted that he was somewhat desperate for a job. Therefore, I believe Fee's and Teshon's claim that Young misled them as to his competency to repair a Wilcox continuous-mining machine is entitled to more consideration than Young's claim that he did not cause them to think he knew more about the Wilcox than he actually did.

For all of the foregoing reasons, I believe that Young engaged in almost no protected activity under the Act while employed by Terry Glen; that even if he did engage in some protected activity, his discharge was in no way motivated by that protected activity; and that the real reason for his discharge was that given by Teshon, namely, that Young did not have the competency needed to repair the Wilcox continuous-mining machine used by Terry Glen at the Barn Branch Mine.

WHEREFORE, it is ordered:

The discrimination complaint filed on February 7, 1983, in Docket No. KENT 83-126-D is dismissed.

Richard C. Steffey
Administrative Law Judge