

CCASE:
HARRY GILPIN V. BETHLEHEM MINES
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

HARRY J. GILPIN,

COMPLAINANT

v.

BETHLEHEM MINES CORPORATION,

RESPONDENT

DISCRIMINATION PROCEEDING

Docket No. PENN 84-5-D

MSHA Case No. PITT CD 83-11

Marianna Mine No. 58

ORDER OF DISMISSAL

Before: Judge Broderick

On November 2, 1983, Complainant filed documents with the Commission which were accepted as a complaint of discrimination under section 105(c) of the Federal Mine Safety and Health Act of 1977 (the Act). The documents included a copy of the original complaint filed with MSHA dated July 27, 1983. This complaint alleges that Respondent Bethlehem Mines Corporation (Bethlehem) has had a policy of requiring miners to pass a welding test before being awarded jobs as mechanics. On June 6, 1983, employees were awarded jobs as mechanics without taking and passing the welding test. During the week of January 18, 1983, Complainant bid on a mechanic's job and was told that he must take and pass the welding test before he would be awarded the job. Complainant contends that this is discrimination in that some employees have to take and pass the welding test before becoming mechanics and some do not. In his letter to the Commission, Complainant states that he should have been awarded the job, being the senior employee.

On December 8, 1983, Respondent filed an answer, a Motion to Dismiss, a Memorandum of Law in Support of the Motion to Dismiss, and a Motion for a Protective Order. Complainant, who is not represented by counsel, has not responded to the motions.

A complainant appearing pro se is not held to the same pleading requirements that might be expected of a lawyer. He must, however, assert a claim under the Act. The Mine Act does not protect an employee from all forms of discriminatory conduct

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on the part of his employer, but only from discrimination for activity protected under the Act, that is, activity related in some way to mine safety and health. The Act does not enforce seniority rules or work rules unrelated to safety.

There is no hint in the documents submitted to the Commission that Complainant was denied a promotion or a job opportunity because he made safety complaints. Rather, he complains of generally unfair application of job promotion rules and failure to follow seniority rules. These are not matters within the jurisdiction of the Commission. See *Lane v. Eastern Associated Coal Corp.*, 2 BNA MSHC 1082 (1980) (ALJ).

Because I find that the complaint herein does not state a cause of action under section 105(c) of the Act, this proceeding is DISMISSED.

James A. Broderick
Administrative Law Judge