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JAMES DOWDELL V. CONSOLIDATION COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

JAMES L. DOWDELL,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. LAKE 83-96-D

CONSOLIDATION COAL COMPANY,
RESPONDENT

MSHA Case No. VINC CD 83-11

DECISION

Appearances: James L. Dowdell, Scio, Ohio, pro se;
Jerry Palmer, Esq., Consolidation Coal
Company, Pittsburgh, Pennsylvania, for
Respondent.

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, 30 U.S.C. 801 et seq. The initial complaint was filed with the Secretary of Labor, Mine Safety and Health Administration (MSHA), on July 25, 1983. Following an investigation, MSHA advised the complainant by letter dated August 24, 1983, that MSHA's investigation failed to disclose any violation on section 105(c).

Following receipt of MSHA's notification that it would not pursue his claim further, the complainant filed his pro se complaint with the Commission on September 9, 1983. In response to further orders issued by the Commission's chief judge, the complainant furnished additional statements concerning his complaint, and these statements included allegations of discrimination on the part of five of respondent's management employees.

Issue

The critical issue presented in this case is whether Mr. Dowdell's discharge was in any way prompted by his engaging in any protected activity under section 105(c) of the Act, or whether it resulted from a violation of company policy against fighting on mine property, 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 C.F.R. 2700.1, et seq.

DISCUSSION

Complainant's Testimony and Evidence

James L. Dowdell, the complainant in this case, testified that until his discharge in June 1983, he was employed by the respondent for approximately 12 years. At the time of his discharge, he was employed as a shuttle car operator at the Oak Park No. 7 Mine, and he earned the regular union pay of \$10 to \$11 an hour. He stated that he has been unemployed since his discharge, and that he has received unemployment benefits from the State of Ohio (Tr. 6-9).

Mr. Dowdell asserted that there was consumption of beer and alcohol in the underground mine, as well as fighting among miners, and that mine superintendent Matkovich would do nothing about it. With regard to his fight with Mr. Thompson, Mr. Dowdell stated that it took place off mine property on State Road 9 and that Mr. Thompson pulled a knife. Mr. Dowdell stated that the police were not called and that Mr. Thompson "got skinned up a little bit" (Tr. 14).

Mr. Dowdell admitted that he was wrong in fighting, but he insisted that the fight did not violate company rules because it took place off mine property. He asserted that he cannot read and write, and that at the time of his discharge, he had learned that he and other miner's were being laid off. He went to the mine to retrieve some clothing, and when he arrived he asserted that Mr. Thompson "started hollering and calling me all kinds of names and stuff, and pulled a knife on me" (Tr. 15).

Mr. Dowdell confirmed that his discharge was arbitrated under the union-management contract (Tr. 16-18). He was discharged for fighting with Mr. Thompson, and they were not drinking (Tr. 19). Mr. Dowdell alluded to several prior fights between other miners which he claimed occurred "a few years back," and one which occurred a month or two before

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his fight with Mr. Thompspon, and he claimed that no one was disciplined for these fights (Tr. 21).

Mr. Dowdell alleged that miners were drinking beer on the job and that nothing was done about it (Tr. 27). When asked why the safety committee was never apprised of the alleged drinking and fighting, Mr. Dowdell stated "most union men that sees another fight don't just go out and tell on another union man" (Tr. 25), and "they're union men, the safety men, and they see them fill it up, and see them drink it. Now who am I going to report it to?" (Tr. 29).

Mr. Dowdell asserted that he was assigned certain job tasks which were not safe, including the shoveling of coal on the belt slope (Tr. 32) and working in dust (Tr. 32-36). However, he conceded that after complaints were made about the shoveling on the belt slope, and the dust, the matters were resolved and the conditions were corrected (Tr. 37). He also confirmed that when he complained, he was assigned to other work (Tr. 37).

Mr. Dowdell alluded to the fact that he was called into the mine manager's office to discuss the matter of conversation over the mine phone, including the use of profanity (Tr. 43-44). He claimed that mine foreman Sikora accused him of speaking over the phones and that he threatened to fire him over the matter (Tr. 45-46). He also alluded to the fact that shift foreman Cristini has also threatened to fire him over the conversation on the mine phones (Tr. 47). He also alluded to an incident concerning the removal of a scoop from the mine, and Mr. Dowdell believed that the procedures used by Mr. Cristini for removing the scoop were unsafe (Tr. 48-54). Mr. Dowdell alluded to instances when he was taken off different job tasks and assigned to others, and while he believed that this was improper, he never filed any grievances (Tr. 69).

On cross-examination, Mr. Dowdell confirmed that he fought with Mr. Thompson and struck him in the face. However, he asserted that Mr. Thompson had a knife and that he was simply defending himself, and that the fight took place on State highway No. 9 (Tr. 72-76). Mr. Dowdell also mentioned some previous fights among miners which he claimed took place underground, and he also claimed that he had complained about some bad brakes on a shuttle car. He claimed that he complained to the safety committee about the brakes, and as a result of his complaints, he was taken off the shuttle car and someone else was assigned that task (Tr. 78). He also claimed that he had complained to a Federal inspector, and he confirmed that the brake calipers were repaired and that no citations were issued (Tr. 80-81).

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Ronald Taylor testified that he has been employed by the respondent for approximately a year as an unskilled laborer, and that he has been intermittently laid off from time to time. He was last called back to work on March 1, 1984. Mr. Taylor stated that he did not know what the present case was about other than the fact that the complainant had a fight with Mr. Thompson. As for any fighting by other miners and drinking on the job, Mr. Taylor stated that "I wasn't working there at the time, you know, it's all hearsay" (Tr. 82-87).

Mr. Taylor stated that the complainant did complain to mine management about Mr. Thompson's insistence on using a certain aisle in the wash house to reach his dressing area, and that this is what precipitated the fight with the complainant (Tr. 89). Mr. Taylor confirmed that he was not at the mine when the fight took place (Tr. 90). Mr. Taylor stated further that the complainant took the matter of Mr. Thompson insisting on using an aisle where other miners dressed to the safety committee because Mr. Thompson would bump other miners with his clothes basket, and he (Taylor) believed this was a safety issue. Mr. Taylor indicated that he too complained to a member of the safety committee (Tr. 94). The safety committee member spoke to mine management, and the superintendent and shift foreman spoke to Mr. Thompson about the matter (Tr. 95).

Mr. Taylor stated that he has personally never observed any miners fighting, and that he never observed any miners drinking on the job, nor has he ever heard of anyone having liquor in the mine (Tr. 96). Moreover, he knows of other miners, including himself, who drank beer on the parking lot and in the wash house after their shift was over, and that these areas were on company property (Tr. 96-97).

Mr. Taylor alluded to an encounter at the mine between Mr. Dowdell and one Ray Tubble. He indicated that it started as "a joke" with the two pushing each other, and Mr. Tubble got mad and upset when his belt was broken, and Mr. Dowdell offered to buy him a new one (Tr. 96, 99). He also alluded to "hearsay" of a fight between Mr. Tubble and one Tank Stall, but he did not witness the alleged incident (Tr. 101).

Mr. Taylor also alluded to an asserted "problem" about shovelling coal on the slope. Moreover, he indicated that the matter was resolved between mine management and the safety committee. Mr. Taylor indicated that Federal inspectors come to the mine, and after it was determined where it was safe to shovel, the matter was mutually resolved. Mr. Taylor also stated that he was never required to shovel

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where he believed it was unsafe, and he could not recall whether Mr. Dowdell was part of the crew which complained about the shovelling on the slope (Tr. 106). He also indicated that he was never assigned to shovel on the slope as "punishment," and he conceded that this was part of his job (Tr. 107).

Mr. Taylor indicated that he had no knowledge about Mr. Dowdell being assigned to shovel on the slope after the other crew which complained was taken off that job (Tr. 107).

On cross-examination, Mr. Taylor stated that he did not know whether Mr. Dowdell or Mr. Thompson complained to mine management about their fight, nor did he know whether Mr. Stall or Mr. Tubble informed management about their alleged fight (Tr. 109).

Ronald Stall testified that he never engaged in any fights in the mine with Ray Tubble. He "has heard" about fights, including an alleged incident in 1970 involving a foreman, but Mr. Stall was not at the mine at that time (Tr. 130). He also alluded to an incident which he characterized as "horseplay," but could furnish no other details (Tr. 121).

When asked if he knew what this case was about, Mr. Stall responded "Well, he got fired. That's all I know. I know he's got a discrimination case--some kind" (Tr. 122). Mr. Stall confirmed that he was not at the mine when Mr. Dowdell and Mr. Thompson got into a fight (Tr. 125).

Dan Hoffman testified that he has been employed at the mine for approximately 14 years as a mechanic. He could not recall Mr. Dowdell being taken off his regular job as a shuttle car operator and being assigned to laborer's work, and while he "has heard" about fights in the mine, he had no personal knowledge about any of them (Tr. 132).

Although he alluded to an alleged bad brake condition on a shuttle car, Mr. Hoffman had no recollection of anything specific (Tr. 134). Further, while he "has heard" about the fight between Mr. Dowdell and Mr. Thompson, Mr. Hoffman was not at the mine when the incident occurred, and he had no personal knowledge about the matter (Tr. 134). When asked about his understanding of Mr. Dowdell's complaint in this case, Mr. Hoffman stated that "my understanding is that the fight didn't happen on company property--that's the only thing I've heard. I don't really know" (Tr. 134).

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George Armstrong testified that he is employed by the respondent as a continuous-miner operator. He stated that he had no knowledge of any trouble between Mr. Dowdell and Mr. Thompson other than "walking through the aisle" in the wash house. Mr. Armstrong also stated that he has never observed any fights at the mine (Tr. 137), and he confirmed that he did not witness the fight between Mr. Dowdell and Mr. Thompson (Tr. 143).

Respondent's Testimony and Evidence

Joe Matkovich mine superintendent, testified that he hired Mr. Dowdell sometime in 1981 or 1982. He confirmed that he considered his complaints concerning Mr. Thompson and other miners in the bathhouse. One complaint concerned Mr. Thompson's insistence on using a certain aisle to walk to his dressing locker, and the other complaint concerned a complaint by Mr. Thompson that men were throwing pop cans at him in the bathhouse (Tr. 177-182).

Mr. Matkovich stated that he first learned about the fight between Mr. Dowdell and Mr. Thompson when he received a telephone call at his home from acting shift foreman Don Vanscay on the evening of June 23, 1984. Mr. Vanscay advised him that the fight took place in the bathhouse. The mine had officially gone on lay-off status that evening, and during the next few days while the mine was idle Mr. Matkovich conducted an inquiry to ascertain the facts surrounding the fight (Tr. 183).

Mr. Matkovich stated that his inquiry into the fight established that Mr. Dowdell struck Mr. Thompson in the mouth as he got out of his car in the area by the back doors of the bathhouse. As Mr. Thompson stumbled through the bathhouse doors, Mr. Dowdell kicked him in the rear. Mr. Dowdell claim that the fight took place on the State Highway road No. 9, after Mr. Dowdell confronted Mr. Thompson and invited him there. Mr. Dowdell claimed that Mr. Thompson drew a knife, and that he kicked it out of Mr. Thompson's hand and punches were exchanged. Mr. Matkovich stated that a search was conducted by five or six foremen and a representative of the company's industrial relations office, but that no knife was found (Tr. 183-185).

Mr. Matkovich confirmed that he made the decision to discharge Mr. Dowdell for violating company policy against fighting, and he identified Exhibit R-1, as a copy of the discharge letter given to Mr. Dowdell. The letter should have been dated July 8, 1983, and the June date is simply a typographical error (Tr. 188). Mr. Matkovich also identified Exhibit R-2, as a copy of the company employee conduct

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rules which are posted at the mine and which served as the basis for the discharge (Tr. 191).

Mr. Matkovich confirmed that at no time during his inquiry into the fighting incident did anyone ever mention any safety activities engaged in by Mr. Dowdell. He also confirmed that Mr. Dowdell appealed his discharge through the regular union-management contract, and after a hearing before an arbitrator, the discharge was sustained (Tr. 192, Exhibit R-3).

Mr. Matkovich stated that he has investigated past complaints of employees fighting at the mine, and in one instance his discharge of an employee in late 1981 or early 1982 was upheld after it went to arbitration (Tr. 194). As for drinking on the job, Mr. Matkovich stated that he was not aware of any drinking on mine property and that no one ever made any complaints to him about such conduct (Tr. 196). Mr. Matkovich also indicated that he had no knowledge that Mr. Dowdell received unemployment compensation after his discharge (Tr. 196).

Mr. Matkovich confirmed that he had received a complaint in August 1982, from some miners about shovelling coal on the slope belt. Miner Karen Overheart had reportedly been hit on her hard hat by a lump of coal, and the miners complained that shoveling on the slope belt was unsafe. As a result of this complaint, the safety committee and Federal inspectors visited the belt area and certain belt areas were designated as areas where shovelling could be done while the belt was idle or on a weekend (Tr. 197-199). Mr. Matkovich could not recall whether Mr. Dowdell was among the group of miner's who complained (Tr. 200). He confirmed that prior to his discharge, he had never had any problems with Mr. Dowdell concerning safety or his work (Tr. 208).

Carl Kelly testified that he is employed by the respondent as a rock duster, and that on June 23, 1983, he worked at the mine during the 4:00 p.m. to 12:00 afternoon shift. He stated that while in the bathhouse at the end of his shift he heard some commotion at the back door and as he turned around he saw Mr. Thompson on his hands and knees inside the bathhouse. He observed Mr. Dowdell "more or less hollering at Fred," and saw Mr. Dowdell kick Mr. Thompson in the rear as he was getting up. He later observed them talking to each other, and he then left the area (Tr. 210-212; 214-218). Mr. Kelly confirmed that he testified at the arbitration in Mr. Dowdell' case (Tr. 213).

Frederick C. Thompson testified that he reported for work on June 23, 1983, and as he got out of his car and

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started for the bathhouse, Mr. Dowdell attacked him and struck him in the face. Mr. Thompson stated that he did not strike back because he had his dinner bucket and thermos in one hand and his car keys in the other. Prior to striking him, Mr. Dowdell told him that a member of the mine safety committee had informed him that he (Dowdell) was responsible for harassing Mr. Thompson (Tr. 223).

Mr. Thompson stated that after he was struck by Mr. Dowdell, he went down and someone kicked him from the rear, but that he did not see who did it (Tr. 224). He then entered the bathhouse and went to the shift foreman's room to tell him what happened (Tr. 225). Mr. Thompson denied that he was ever on the bathhouse floor, and he denied that he had a knife with him or that he ever pulled a knife on Mr. Dowdell (Tr. 225).

Mr. Thompson stated that he was later interviewed by the mine superintendent and told him what had happened, and that he also testified at the arbitration hearing in Mr. Dowdell's case. He also indicated that as a result of being struck by Mr. Dowdell, his lip and denture plate were broken (Tr. 226).

Mr. Thompson stated that Mr. Dowdell had never hit him with a clothes basket, push him out of the way as he made his way down the aisle of the bathhouse, nor did he ever throw pop cans at him. He also confirmed that he had never had any trouble with Mr. Dowdell in the bathhouse and he stated that "I don't know how this all came about" (Tr. 237). Mr. Thompson stated that he did not seek to prosecute Mr. Dowdell, and that he has not seen him since his arbitration case (Tr. 242).

James J. Cristini, shift foreman, testified that he worked the afternoon shift at the mine on June 23, 1983. He confirmed that he has known Mr. Dowdell since 1972, and met him at another mine operated by the respondent, but he never directly supervised him. He has supervised him from time-to-time at the Oak Park No. 7 Mine (Tr. 249).

Mr. Cristini confirmed that Mr. Dowdell and two other miner's helped him load and remove a scoop from the mine so that it could be repaired. Mr. Cristini stated that proper procedures were followed in taking out the scoop and Mr. Dowdell said nothing about these procedures (Tr. 253).

Mr. Cristini stated that on June 23, 1983, he heard Mr. Dowdell comment that "if Fred (Thompson) shows up, I'll get him" (Tr. 256). A few minutes later Mr. Thompson and Mr. Dowdell came to his office, and Mr. Thompson's shirt was

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torn and "his lip was busted." He stated that Mr. Dowdell had "sucker-punched him out in the parking lot." Mr. Cristini stated that he gave a statement to mine management concerning his knowledge of the incident, but that he did not participate in the investigation (Tr. 257).

Mr. Cristini denied that he ever threatened to fire Mr. Dowdell because of his alleged derogatory comments about him over the mine phone (Tr. 266). He also confirmed that the incident concerning the phone occurred in 1980 (Tr. 267). He denied that he ever asked Mr. Dowdell to do anything which was unsafe or that he ever had any problems with Mr. Dowdell other than the phone incident (Tr. 272).

Jerry L. Truschel, section foreman, confirmed that Mr. Dowdell worked under his supervision as a shuttle car operator shortly before his discharge, but that he was not on his crew at the time he was discharged. He could not recall Mr. Dowdell ever complaining about the brakes on the shuttle car, or ever refusing to operate a car. Mr. Truschel confirmed that due to absenteeism on one day, Mr. Dowdell was re-assigned to operate a scoop and a cleanup man was assigned to operate the shuttle car (Tr. 277).

Mr. Truschel was at the mine on June 23, 1983, and Mr. Thompson walked into the foreman's office. His mouth was bloody, his shirt was torn, and his arms were scraped. He stated that Mr. Dowdell struck him when he got out of his car on the parking lot. Mr. Dowdell then came into the office and stated that he struck Mr. Thompson, but insisted that the incident occurred on the highway and not on mine property (Tr. 278). Mr. Truschel stated that he did not participate in the investigation of the incident (Tr. 279).

Mr. Truschel denied that Mr. Dowdell ever advised him that a reel cage was falling off his shuttle car and cutting eight or nine cables a day (Tr. 280). He also denied that he told Mr. Dowdell to operate his shuttle car with no brakes (Tr. 283).

Thomas A. Sikora, mine foreman, testified that Mr. Dowdell worked for him for a short while for 2 or 3 months when an old section of the mine was being readied for active production. He never had any problems with Mr. Dowdell, and Mr. Dowdell never made any safety complaints to him (Tr. 285).

Mr. Sikora did confirm that he spoke to Mr. Dowdell about his talking over the mine phone, but that he never disciplined him about the matter and simply had an informal talk with him (Tr. 286).

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With regard to the matter concerning shovelling on the slope belt, Mr. Sikora stated that the matter came up 2 years ago, and that after meeting with the miner's who believed that shovelling in certain areas was unsafe, the matter was resolved by the implementation of safe working instructions for the belt areas in question (Tr. 288). Mr. Sikora denied that he ever assigned Mr. Dowdell to shovel under unsupported roof or in any areas marked unsafe (Tr. 289).

Mr. Sikora confirmed that he participated in the management inquiry concerning the fight between Mr. Dowdell and Mr. Thompson. At no time was the matter of Mr. Dowdell making safety complaints ever mentioned (Tr. 289). The decision was made to discharge Mr. Dowdell for striking Mr. Thompson on mine property (Tr. 290).

Mr. Sikora had no knowledge of any prior fighting at the mine, and he denied any knowledge of Mr. Dowdell shovelling by himself on the slope belt for 6 months (Tr. 291). He indicated that no one was ever assigned to that belt for 6 months (Tr. 292).

Mr. Sikora denied ever stating that he was going to fire Mr. Dowdell, and he indicated that he did not participate in the decision to discharge Mr. Dowdell for fighting (Tr. 295).

Findings and Conclusions

For the sake of clarity, and in order to insure that the Commission's task of review is not needlessly complicated in the event this case is appealed, and in keeping with the Commission's admonition as stated in a recent opinion in *Roger E. Sammons v. Mine Services Co.*, SE 82-15-D, June 5, 1984, I feel it advisable to reiterate the basic analytical precedent guidelines established by the Commission in the area of discrimination law, and these guidelines follow below.

In order to establish a prima facie case of discrimination under section 105(c) of the Mine Act, a complaining miner bears the burden of production and proof to establish (1) that he engaged in protected activity and (2) that the adverse action complained of was motivated in any part by that activity. Secretary on behalf of *Pasula v. Consolidation Coal Co. v. Marshall*, 2 FMSHRC 2786, 2799-2800 (October 1980), rev'd on other grounds sub nom. *Consolidation Coal Co. v. Marshall*, 663 F.2d 1211 (3d Cir.1981); and Secretary on behalf of *Robinette v. United Castle Coal Co.*, 3 FMSHRC 803, 817-18 (April 1981). The operator may rebut

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the prima facie case by showing either that no protected activity occurred or that the adverse action was in no way motivated by protected activity. If an operator cannot rebut the prima facie case in this matter it may nevertheless affirmatively defend by proving that (1) it was also motivated by the miner's unprotected activities, and (2) it would have taken the adverse action in any event for the unprotected activities alone. The operator bears the burden of proof with regard to the affirmative defense. Haro v. Maga Copper Co., 4 FMSHRC 1935, 1937 (November 1982). The ultimate burden of persuasion does not shift from the complainant. Robinette, 3 FMSHRC at 818 n. 20. See also Boich v. FMSHRC, 719 F.2d 194 (6th Cir.1983); and Donovan v. Stafford Constr. Co., Nos. 83-1566, D.C.Cir. (April 20, 1984) (specifically approving the Commission's Pasula-Robinette test). The Supreme Court has approved the National Labor Relations Board's virtually identical analysis for discrimination cases arising under the National Labor Relations Act. NLRB v. Transportation Management Corp., --- U.S. ----, 76 L.Ed.2d 667 (1983).

The parties were afforded an opportunity to file post-hearing arguments in support of their respective positions. Mr. Dowdell filed a one-page letter in which he reiterates the assertion that Mr. Thompson was armed with a knife at the time of their encounter. He also alluded to the fact that miners had been known to drink on mine property. While I may sympathize with the fact that Mr. Dowdell brought this action pro se, and do not dispute the fact that he may not be totally literate, his arguments simply do not constitute a case of discrimination under the Act.

Respondent's arguments, filed by its legal counsel, conclude that Mr. Dowdell's conduct was not protected activity, that he was not the victim of disparate treatment, that great weight should be given to the arbitrator's determination that his discharge for fighting was appropriate, and that he simply has not made out a prima facie case of discrimination.

On the facts presented in this proceeding, there is no credible evidence to suggest or support any theory that Mr. Dowdell's discharge was in any way connected with any protected safety activities on his part. There is no evidence of any protected work refusals or retaliation for those asserted activities, nor is there any evidence that Mr. Dowdell made any safety complaints to mine management or to MSHA or to state mining officials concerning safety matters peculiar to his particular working environment, or that mine management retaliated against him by discharging him. The thrust of his complaint is that his discharge was

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arbitrary in that Mr. Thompson was the aggressor and was armed with a knife during their fight. Mr. Dowdell obviously believes he was treated unfairly by the respondent when he was discharged, and the basis for this conclusion is his assertion that he was simply defending himself and that the fight took place off mine property.

After careful review of all of the evidence and testimony adduced in this case, the respondent has established by a preponderance of the evidence and testimony adduced at the hearing, including the testimony of witnesses called by Mr. Dowdell, that Mr. Dowdell's attack on Mr. Thompson was unprovoked, that Mr. Thompson was not armed with a knife, and that the fight did in fact take place on mine property. Given the fact that fighting was a dischargeable offense under the respondent's rules of conduct, I cannot conclude that the respondent acted arbitrarily when it discharged Mr. Dowdell. Although one may sympathize with Mr. Dowdell for losing his job after years of satisfactory service with the respondent, absent any showing of a connection with protected safety activities under the Act, I believe that employee discipline should be best left to the respondent. In this case, Mr. Dowdell availed himself of all of the rights afforded him under the applicable labor-management contract and grievance procedures, and the decision to discharge him was solely within the discretion of mine management.

With regard to the question of disparate treatment, after careful review of the record here, I cannot conclude that Mr. Dowdell has established that he was treated differently from other employees who may have been similarly situated. Although given a full opportunity to present and develop his case, even over the objections of respondent's counsel that I somehow was acting as his advocate, Mr. Dowdell was unable to substantiate his charges in this regard. All of the witnesses called on his behalf, while appearing to me to be honest and straightforward, still could not substantiate his charges. Their accounts of past fights between miners on mine property were lacking in credibility and specific facts, and were so far removed in time from the time of Mr. Dowdell's encounter with Mr. Thompson and his discharge as to render any sinister motive for the discharge as totally lacking in credibility.

With regard to Mr. Dowdell's charges of drinking on the job by miners, as well as the implication by the testimony of several witnesses that tempers were short and that miners at times armed themselves with various weapons to protect themselves from other miners, I can only conclude that these alleged incidents have not been shown to have any bearing on

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Mr. Dowdell's complaint. Further, if such allegations are true, I believe they are best left to the managerial talents of those individuals charged with the responsibility of operating the mine. Since the mine has a safety committee, and since it is regulated by MSHA, I would expect that any such complaints which may affect the safety of the work force at the mine will and should be addressed by these entities rather than a Commission Judge assuming the role of a policeman.

Conclusion and Order

In 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 complainant has failed to establish a prima facie case of discrimination on the part of the respondent. Accordingly, the complaint IS DISMISSED, and the Complainant's claims for relief ARE DENIED.

George A. Koutras
Administrative Law Judge