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B.J. STRAKA v. CONSOL PENNSYLVANIA

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

BENEDICT J. STRAKA,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. PENN 85-231-D

CONSOL PENNSYLVANIA COAL
COMPANY,
RESPONDENT

PITT CD 85-6

Bailey Mine

DECISION

Before: Judge Fauver

This proceeding was brought by Benedict J. Straka under section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. The Complaint states the following:

Sometime in February, 1984, I filed an employment application with Consolidation Coal Co., at the Bailey Mine. Sometime in August of 1984 (either the 22nd to the 27th), I took an employment test. (aptitude test). To my knowledge I passed this test. Since August of 1984, this company has continued to hire coal miners, by January of 1985, there were approximately 130 men employed there.

My complaint is this. I believe I am being discriminated against, because I had previously worked for Consolidation Coal at the Laurel Mine in Central City and having belonged to the union therein (Local UMW 1979). The Bailey mine at which I applied for employment is being operated as a non-union mine.

It is my belief that this mine is to remain non-union by hiring only non-union miners and people who have a union mining background stand little chance of employment at the Bailey mine unless of black or female origin.

On March 19th, I spoke to a man named Carl Mikolish. He has a brother-in-law named William Rosner. Mr. Rosner was my supervisor at times at the Laurel Mine. He was one of three shift maintenance foreman at the Laurel Mine, when it was operating. According to Carl Mikolish, Bill Rosner applied for work at the Bailey mine at the early part of March, 1985. The following week, he was given a pre-employment interview, a week after that he was scheduled for a physical exam. He began working sometime during the week of March 19 to the 23rd. He began working at the Bailey mine as a general inside laborer. I held the job of general inside laborer at the Laurel Mine the last two years I worked there.

Pursuant to section 105(c)(2) of the Act, Mr. Straka first filed a complaint with the Secretary of Labor (Mine Safety and Health Administration). After investigation, the Secretary found that no violation of section 105(c) had occurred. Mr. Straka then exercised his right to file a complaint before this independent Commission.

Respondent has moved to dismiss the Complaint for failure to state a claim for which relief can be granted under section 105(c)(1) of the Act.

Section 105(c)(1) of the Act provide:

(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.

I agree with the motion to dismiss. The Complaint does not allege or indicate that Mr. Straka was in any manner discriminated against because of an activity covered by section 105(c)(1) of the Act or that his exercise of a right afforded by the Act was interfered with in any way.

ORDER

WHEREFORE IT IS ORDERED that Respondent's Motion to Dismiss is GRANTED and this proceeding is DISMISSED.

William Fauver
Administrative Law Judge