

CCASE:
DAIRL EDDINGTON V. FALCON COAL
DDATE:
19870114
TTEXT:

FMSHRC-FCV
JAN 14, 1987

DISCRIMINATION PROCEEDING

DAIRL EDDINGTON,
Complainant

Docket No. KENT 86-164-D

v.

BARB CD 86-24

FALCON COAL COMPANY,
Respondent

DECISION

Before: Judge Maurer

On January 30, 1986, the complainant, Dairl Eddington, filed a complaint of discrimination under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., "the Act," with the Secretary of Labor, Mine Safety and Health Administration (MSHA) against the Falcon Coal Company. That complaint was denied by MSHA and Mr. Eddington thereafter filed a complaint of discrimination with this Commission on his own behalf under section 105(c)(3) of the Act. Mr. Eddington alleges that he was discriminated against in violation of section 105(c) of the Act because he was disqualified for a position in the mine that was subsequently filled by a relative of the superintendent. More specifically he alleges as follows:

Robert Spencer, inside boss, told Henry Coots and I on the outside to do on that day the same as we had done on Friday 13th.

Inside, Robert then told me to build brattish. The material sent in was not enough. The materials sent were plaster or sealer was froze, and I could only use half of it. Then I had to take the scoop outside to get mandor, asking Robert where it was he didn't know, so I had to go find Kash Mullins, Superintendent, he then told me where the mandor was. Then when I found the mandor I had to move other materials to find it. Then running out of material again we had to send Ronnie Whitaker and another worker outside to get the rest of the material. They brought sack cloth and cap boards. They also didn't bring any 4 inch block or 2 inch header block because they were out.

At 2:30 Robert Spencer told me, I was wanted on the outside by Kash Mullins. Before leaving the job I asked was the brattish he was working on alright. Roberts' reply to the question was "Yes, Dairl it's ok."

On arriving outside it was about 2:45, Kash Mullins started to talk, then he said wait a minute, he then came back with Robert Spencer. They then told me why they were disqualifying me. Kash said because of being out of the mines as long as I had been I was no longer an experienced miner. They evaluated me on the scoop for the length of time, I had operated the scoop in their presence, and in their opinion I should have been faster. Robert Spencer, said I was a good worker, and so did Kash. But that I wasn't putting out enough production and that they would be glad to have me work as an inexperienced miner. They also said you had to be able to operate something other than a scoop.

I operated a front end loader and built brattish. Brattish person and scoop operator are different classification.

The Falcon Coal Company thereafter responded, inter alia that the complaint fails to state a claim upon which relief can be granted under section 105(c). That contention may be taken as a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the purposes of such a motion, the well pleaded material allegations of the complaint are taken as admitted. 2A Moore's Federal Practice, 1| 12.08. A complaint should not be dismissed for insufficiency unless it appears to a certainty that the complainant is entitled to no relief under any state of facts which could be proved in support of a claim. Pleadings are, moreover, to be liberally construed and mere vagueness or lack of detail is not grounds for a motion to dismiss. Id.

Section 105(c)(1) of the Act provides as follows:

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 representative of miners or applicant for employment has instituted or caused to be instituted any proceedings 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.

In order to establish a prima facie violation of section 105(c)(1) the complainant must prove that he engaged in an activity protected by that section and that the alleged discrimination was motivated in any part by that protected activity. Secretary ex. rel. David Pasula v. Consolidation Coal Company, 2 FMSHRC 2786 (1980), rev'd on other grounds, sub nom, Consolidation Coal Company v. Secretary, 663 F.2d 1211 (3rd Cir., 1981). In this case Mr. Eddington asserts that he was discriminated against because he was wrongfully disqualified for a position in the mine which subsequently was filled by a relative of the superintendent. Assuming that this allegation is true, it is clearly not sufficient to create a claim under section 105(c)(1) of the Act. That section does not provide redress for a wrongful disqualification for a particular job that may have been unfair if that disqualification was not caused in any part by an activity protected by the Act. Accordingly, the complaint herein must be denied and the case dismissed.

Roy J. Maurer
Administrative Law Judge

Distribution:

Dairl Eddington, P. O. Box 15, Viper, KY 41774 (Certified Mail)

George S. Brooks II, Esq., 1200 First Security Plaza, Lexington, KY 40507
(Certified Mail)