

CCASE:
NEWTON J. JOHNSON V. ALLIED COALS, INC.
DDATE:
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TTEXT:

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

NEWTON J. JOHNSON,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. KENT 86-139-D

ALLIED COALS, INC.,
RESPONDENT

BARB CD 86-40

Allied Mine No. 2

DECISION

Before: Judge Fauver

This proceeding was brought by Complainant, Newton J. Johnson, under section 105(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., for reinstatement and back pay.

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

"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."

This matter is now before me upon Respondent's Motion for Summary Decision, filed on January 27, 1987, pursuant to 29 C.F.R. 2900.64. Complainant was served a copy of the motion and, by order of February 23, 1987, was granted three weeks to respond to the motion. No response has been filed.

The record affirmatively shows the followed undisputed facts:

1. On June 4, 1984, Johnson applied for the job of night watchman at Allied Coals, Inc. Terry Mullins, Allied's mine superintendent, interviewed Johnson for the job. Mullins told him the night watchman position would include picking up garbage and washing vehicles. Mullins hired Johnson for the night watchman job and Johnson started at \$3.35 per hour.

2. While employed at Allied, his tasks included watching the No. 1 and 2 mines, loading supplies, washing vehicles, picking up garbage, shoveling the belt line on the outside of the mine, and other odd jobs. Johnson did these tasks when asked by his supervisor, Vernon Noble. In between tasks and on weekends when the mine was not operating, Johnson remained in the night watchman's office.

3. While employed at Allied, Johnson did not complain to anyone in management about the safety or health conditions of the jobs he was doing. He never complained that the jobs he was asked to do were unsafe, or that he lacked training.

4. In April of 1985, Johnson asked Terry Mullins for a raise. Johnson told Mullins he wanted a raise because his job involved tasks other than simply watching the property. Mullins refused to give him a raise.

5. On May 8, 1985, Vernon Noble told Johnson to go to Mine No. 2 and help supplyman Kim Rice. When Johnson arrived, Rice told him to shovel the outside belt line. Johnson had shoveled the belt line several times before. This time, he did not want to do it and he quit. Johnson went to Vernon Noble and told him "I wasn't shoveling no belt line." Johnson told Noble he was quitting and left the property.

6. Almost a year later, on April 24, 1986, Johnson filed a discrimination claim with the Mine Safety and Health Administration, United States Department of Labor. On August 5, 1986, the Mine Safety and Health Administration notified Johnson that in its opinion no violation of 105(c) had occurred. On August 11, 1986, Johnson filed this complaint with the Federal Mine Safety and Health Review Commission.

DISCUSSION

To establish a claim under 105(c) of the Act, the complaining miner has the burden of proving that he engaged

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in protected activity and that the employer took adverse action against him that was motivated in part by the protected activity. Secretary on behalf of Pasula v. Consolidation Coal Co. 2 FMSHRC 2786, 2799-2800 (October 1980), revd. on other grounds sub nom. Consolidation Coal Company v. Marshall, 663 F.2d 1211 (3rd Cir.1981); Secretary on behalf of Robinette v. United Castle Coal Co., 3 FMSHRC 803, 817-18 (1981); Boich v. Federal Mine Safety and Health Review Commission, 704 F.2d 272 (6th Cir.1983).

Johnson admits that his sole complaint is that he was required to perform tasks that involved more than merely watching the property and that others who were performing some of the same tasks were paid at a higher rate (Dep. 31, 38, 44, 54, 61-62, 97-98). For example:

Q. Okay. What is your claim against the Company?

A. They ought to have been paying me \$10.50 just the same as they was paying all them other workers, like Dean Mullins and all of them. Cause they was unloading supplies and so was I.

Q. Is that that your whole claim against the Company?

A. Yeah. (Dep. 38).

Johnson's only complaint is that in his opinion, he should have been paid more. He asked for a raise once and quit a month later (Dep. 18, 28-30). This is not protected activity under the Act.

Also, Allied did not take any adverse action against Johnson. He admits that he voluntarily quit, and that he quit only because he did not want to perform his assigned tasks at the rate the company was paying him. (Dep. 35-36, 37, 47-48):

Q. Okay. Why did you quit?

A. 'Cause I wasn't going to shovel that belt line no more over at the #2. (Dep. 33).

Q. You just didn't want to do it? Is that right?

A. That's right. I ain't going to shovel no belt line Why should I shovel it, and somebody else shovel it and they getting \$10.50 for it and me just getting \$3.35. (Dep. 35).

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The Act does not protect a miner from the consequences of voluntarily resigning a job for reasons unrelated to safety or health. See, e.g., *Munsey v. Federal Mine Safety and Review Commission* 595 F.2d 735, 744 (D.C.Cir.1978).

Johnson voluntarily quit his job for reasons unrelated to any safety or health concerns. Respondent is therefore entitled to summary decision.

On an independent ground, Johnson's complaint to MSHA was severely late, and barred by the 60-day time limit for filing complaints under the Act.

ORDER

WHEREFORE IT IS ORDERED that Respondent's Motion for Summary Decision is GRANTED and this proceeding is DISMISSED.

William Fauver
Administrative Law Judge