

CCASE:
SOL (MSHA) (D. ROBINETTE) V. BILL BRANCH COAL
DDATE:
19880310
TTEXT:

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
DONALD J. ROBINETTE
COMPLAINANT
v.

DISCRIMINATION PROCEEDING

Docket No. VA 87-21-D

NORT CD 87-5

Mine No. 8

BILL BRANCH COAL COMPANY,
INC.,
RESPONDENT

DISCRIMINATION PROCEEDING

Docket No. VA 87-22-D

NORT CD 87-7

Mine No. 8

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF JOEY F. HALE,
COMPLAINANT
v.

BILL BRANCH COAL COMPANY,
INC.,
RESPONDENT

ORDER

On February 24, 1988, Respondent, in a telephone call to the undersigned, made a request to compel Petitioner to produce names of certain witnesses pursuant to a written interrogatory. In response to this request, on February 24, 1988, a telephone conference call was arranged by the undersigned with attorneys for both Parties. In this conference call the undersigned requested that the Parties file by March 4, 1988, a memorandum setting forth their position on the issues raised by Respondent's request. Memorandum were filed on March 7, 1988.

It appears from Respondent's Memorandum that its request at this point is for Petitioner to respond to the following interrogatory:

"Please state the names, addresses and telephone numbers of all witnesses interviewed by agents, servants or employees of the government who were not employees of the respondent, Bill Branch Coal Corporation, at the time of their interview with said agents, sub-agents, employees, etc."

Specifically, Respondent has indicated that it seeks "to discern the identity of those individuals whom the Respondent now claim 'over heard' certain statements or 'observed' certain conduct which the Claimants now maintain subsequently cause the Respondent to act in a way which would violate the Act." It appears to be the Respondent's position that these individuals cannot be classified as informers as they have not ". . . furnished information to a government official relating to or assisting in the government's investigation of a possible violation of law, including a possible violation of the Mine Act." (Secretary on behalf of George Roy Logan v. Bright Coal Company, Inc. 6 FMSHRC 2520, 2525 (Nov. 1984)). I find, however, that an individual is an informer if he provides information which is corroborative or supportive of the Complainant's cause of action and thus is in assistance of the government's investigation of a possible violation of section 105 of the Federal Mine Safety and Health Act of 1977. (See, Logan, supra.) As set forth by the Commission in Logan, supra at 2526, the Respondent herein has the burden of proving the necessary facts ". . . to show that the information is essential to a fair determination" In this connection, I note that in its Memorandum the Respondent has merely alleged in general that its need to discover these witnesses is essential to a fair determination, but has not set forth any facts to establish its position. I therefore conclude that the Respondent has not met its burden of establishing its specific need for divulgence of names of informer witnesses to the point that would outweigh the privilege granted in 29 C.F.R. 2700.59.

Therefore, it is ORDERED that, within 7 days of this Order, Petitioner serve upon the Respondent the names, addresses, and telephone numbers of all its witnesses who are not miners.

It is further ORDERED that Petitioner, shall within 7 days of this Order, file with the undersigned a statement containing the names of all witnesses who are informers, and a statement setting forth any facts Petitioner relies upon to establish the informers' privilege for each of the witnesses alleged to be informers. I shall then determine in a subsequent order those witnesses, if any, who are not informers and whose names are to be divulged to the Respondent.

Avram Weisberger
Administrative Law Judge
(703) 756-6210