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

RICHARD R. MAYNES,
COMPLAINANT

DISCRIMINATION PROCEEDING

v.

Docket No. CENT 89-132-DM

PHELPS DODGE CORPORATION,
RESPONDENT

MD 89-35

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DECISION

Complainant, by written Response filed herein on November 1, 1989, has responded to Respondent's Motion for Summary Decision which was filed on September 11, 1989. Complainant's response is found to have merit and it and the exhibits attached thereto are incorporated herein as the initial portion of my decision on this issue. It is further noted that Respondent neither alleged or established that Complainant's initial delay in filing with MSHA prejudicially deprived it of a meaningful opportunity to defend itself in this matter. There is no allegation of specific prejudice or even of general prejudice. See *Schulte v. Lizza Industries, Inc.*, 6 FMSHRC 8 (January, 1984). The delay of Complainant Maynes in filing with the Secretary - approximately 27 days - is not of a duration where one might infer unavailability of or loss of memory of critical witnesses.

It is also specifically held, absent further Commission precedent, that the time limitations of Section 105(c) of the Act insofar as such pertain to individual complainants are not jurisdictional. *Secretary v. 4-A Coal Company, Inc.*, 8 FMSHRC 905 (June, 1986); *Buelke v. Thunder Basin Coal Company*, 11 FMSHRC 240 (February, 1989). To hold individual complainants to a higher standard of filing compliance than the Secretary of Labor would not seem logical or justified in view of the disparity in educational background, legal and business experience, and experience in and familiarity with mine safety processes and requirements. Accordingly, Respondent's motion for summary judgment is denied.

The parties, and their counsel, are directed to forthwith comply with the requirements of my Prehearing Order of September 27, 1989.

Michael A. Lasher, Jr.
Administrative Law Judge