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MICHAEL P. DAMRON v. REYNOLDS METALS  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, Virginia 22041

MICHAEL P. DAMRON,  
COMPLAINANT

v.

REYNOLDS METALS COMPANY,  
RESPONDENT

DISCRIMINATION PROCEEDING

Docket No. CENT 89-131-DM

MD 89-04

Sherwin Plant

DECISION ON REMAND

Appearances: R. Michael LaBelle, Esq., Powers & Lewis,  
Washington, D.C., for

Complainant;

Jean W. Cunningham, Esq., Richmond, Virginia, for Respondent.

Before: Judge Broderick

On April 16, 1991, the Commission remanded the case to me, (1) for further findings and analysis of the testimony of Complainant Michael Damron and his foreman Arlon Boatman concerning Boatman's order to operate the mill on September 7, 1988; and (2) for an explanation of my finding that General Supervisor Glenn Reynolds on September 5, 1988, authorized Damron to run the mill from a safe distance. 13 FMSHRC 535 (1991). Following the remand counsel for Complainant and Respondent filed briefs which I have carefully considered in making this decision on remand. I will first address the question of the Damron-Reynolds conversation.

I

When the protective shelter was torn down, Damron protested the action to Reynolds, the general supervisor in the precipitation and calcination areas of the plant. A safety procedure meeting was called and convened on September 2, 1988, which addressed some of the safety complaints advanced by Damron and the Union. On September 5, Damron approached Reynolds and stated that the company had agreed to erect an overhead plywood shelter for the ball mill. Reynolds denied that such an agreement had been made. On page 4 of my decision I quoted Reynolds' testimony that he told Damron that "if he had any real safety concerns regarding the operation of the belt line, without that temporary shed, that he should go outside the building, down the tunnel,

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and operate the belt standing in that position." On rebuttal Damron denied that Reynolds had given him the "option of working down in the pit next to the conveyor belt." 12 FMSHRC 417-418 (1990).

Neither of these statements is inherently incredible. Because they are contradictory, however, only one can be credited. I chose to credit the testimony of Reynolds. It seemed (and still seems) highly unlikely that he would manufacture out of the whole cloth a rather detailed conversation including the phrase "down the tunnel." I therefore reiterate my finding of fact that Reynolds on September 5, 1988, gave Damron permission to operate the mill away from the building.

II

There is no dispute that Foreman Boatman, who was not at the safety meeting, told Damron on September 6, that he could operate the mill by turning the belt switch on, and stepping back to monitor the belt from a distance where he would not be subject to the possible hazards of falling objects. Damron protested that metal objects could get by the metal detector and damage the hammer mill. "If one of them things would have gotten by, gone into the hammer mill, it would have tore that whole thing up. . . so that was not a very acceptable way for me to run my job properly" (Tr. 225). Boatman told Damron (and I find as a fact that he did tell him) "that should anything go through the detector, if for any reason it failed and we did not get metal in the mill, that it would be my responsibility" (Tr. 352). Damron did not work on the mill on September 6, because of problems in the tray area. In my original decision, I found that Respondent erected a guardrail on the upper floor and agreed to erect a metal shed over the area where the magnet was located.

When Damron reported for work on September 7, Boatman directed him to run the ball mill. Boatman did not change or revoke the authorization given the previous day permitting Damron to monitor the belt from a distance. His testimony, which I quoted on page 5 of my decision, that ". . . I gave him the direct order to operate the facility under normal conditions, standing where needed to, if he needed to stand at the metal detector, if he needed to clean conveyor belts, tail pulleys or whatever, it would be the general operator, the regular operation of the facility" must be considered together with the testimony concerning the conversation on the previous day, which I quoted above. Taking into consideration the two conversations, I conclude that Boatman's order to run the mill included his authorization to monitor the belt from a position away from the building, and that Damron understood this. His refusal to comply with the order resulted more from his belief that the mill could not properly be operated in that fashion, rather than because of any safety concerns. This conclusion is reinforced by my finding

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above that Reynolds authorized Damron to operate the belt away from the building. On the basis of these findings, I conclude that Damron's work refusal was not reasonable, nor did it result from a good faith belief that the work he was ordered to perform was hazardous.

I conclude therefore that Respondent's action in discharging Complainant for refusal to obey an order to perform on work September 7, 1988, was not in violation of Section 105(c) of the Act.

Accordingly, the complaint and this proceeding are DISMISSED.

James A. Broderick  
Administrative Law Judge