

CCASE:
PHILLIP ELSWICK V. COPPERAS COAL
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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

PHILLIP R. ELSWICK, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. WEVA 94-119-D
: HOPE CD 93-20
COPPERAS COAL CORPORATION, :
Respondent : No. 1 Mine

DECISION

Appearances: Robert Lee White, Esq., Madison, West Virginia,
for the Complainant;
Anthony J. Cicconi, Esq., Shaffer & Shaffer,
Charleston, West Virginia, for the Respondent.

Before: Judge Koutras

Statement of the Proceeding

This proceeding concerns a discrimination complaint filed by the complainant against the respondent pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977. The complainant filed an initial complaint with the U.S. Department of Labor, Mine Safety and Health (MSHA), and after investigating the complaint, MSHA informed the complainant of its decision not to pursue the matter. The complainant then filed his complaint pro se with the Commission, and subsequently retained counsel to represent him.

The complainant alleged that he was employed by the respondent as a certified electrician for six days at the respondent's mine, and was reassigned as a greaser after he had reported an unsafe breaker and panic switch on a mining machine to mine management. The respondent took the position that the complainant quit his job for reasons other than his safety complaint and denied any discrimination. A hearing was convened in Charleston, West Virginia, and the parties appeared and participated fully therein. However, as discussed hereafter, the

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parties agreed to settle their dispute, and the complainant's oral motion to withdraw his complaint based on the settlement was granted from the bench. After considering the terms of the settlement on the record, it was approved from the bench, and the matter was dismissed.

Issue

The issue presented in this case is whether or not the respondent discriminated against the complainant by reassigning him from his certified electrician's job to a greaser's job after he complained to mine management about an unsafe condition on a continuous mining machine.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 301 et seq.
2. Sections 105(c)(1), (2) and (3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(1), and (2) and (3).
3. Commission Rules, 29 C.F.R. 2700.1, et seq.

Discussion

The complainant presented the testimony of Billy Cook, a former employee of the respondent who commuted to the mine and worked with the complainant at the time he left his employment. The complainant, Phillip Elswick, also testified, and both witnesses were cross-examined by the respondent's counsel, and responded to several questions from the presiding judge. At the conclusion of all of this testimony and during a break in the hearing, counsel for the parties informed me that the parties reached an agreement to settle their dispute and that Mr. Elswick decided to withdraw his complaint on the basis of the settlement reached by the parties.

The proposed settlement was made on the record, and it was approved by the presiding judge. Mr. Elswick's request to withdraw his complaint was granted, and the case was dismissed from the bench.

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Order

The parties ARE ORDERED to comply with the terms of the settlement. In view of the settlement and the withdrawal of the complaint, this matter IS DISMISSED.

George A. Koutras
Administrative Law Judge

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