

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**601 New Jersey Avenue, N.W., Suite 9500**

**Washington, D.C. 20001-2021**

**Fax No.: (202) 434-9949**

November 18, 2003

JOSEPH SPENCER,	:	DISCRIMINATION PROCEEDING
Complainant	:	Docket No. SE 2003-183-DM
	:	MSHA Case No. SE MD-03-08
v.	:	
	:	
JAHNA INDUSTRIES, INC.,	:	Independent Mine
Respondent	:	Mine ID 08-01021

**ORDER DENYING MOTION TO DISMISS**  
**NOTICE OF HEARING**  
**AND**  
**PREHEARING ORDER**

Joseph Spencer, a pro-se claimant, has filed the subject discrimination complaint against Jahna Industries, Inc. (Jahna) alleging that he was illegally discharged by Jahna on January 16, 2003, in violation of section 105(c)(1) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 815(c)(1)). In its answer, Jahna denies it violated the Mine Act when it terminated Mr. Spencer. Further, it moves to dismiss Mr. Spencer's complaint, asserting that the complaint fails to state a claim upon which relief may be granted. Jahna points out that Mr. Spencer states in his complaint, "I was fired because of a workman's comp[ensation] claim," and Jahna correctly notes that "the filing of a Workers' Compensation claim is not within the [Mine Act's] definition of prohibited discrimination" (Discrimination Complaint 2; Answer and Mot. To Dismiss 6).

While I recognize the valid argument raised by Jahna, I also recognize that Mr. Spencer is representing himself, and that it has long been the practice of the Commission's judges to liberally construe the pleadings of pro-se complainants. This has meant that in identifying the protected activity that is alleged to be the cause of discrimination, the Commission and its judges have at times looked beyond the immediate cause of termination to the cause or causes from which the immediate cause was derived. They have found that a cause which facially was not prohibited by the Act, was in fact prohibited when it was the direct result of a safety complaint or other protected activity.

In his complaint, Mr. Spencer asserts that the particular equipment which injured him and caused him to file his compensation claim was "wrote up several times in inspection sheet[s] by operators and me," that the compensation claim "should not have happened, if... the [equipment] had been fixed," and that "the employees and other managers did not like my thorough examination of equipment ... because it gave them a bigger work load" (Discrim. Compl. 2,5).

Liberally construing Mr. Spencer's complaint, it may be that he is alleging his termination would not have happened but for his complaints and reports about the safety of said equipment. Because this is not an unreasonable construction of Mr. Spencer's complaint, I cannot grant Jahna's motion and dismiss the case. Mr. Spencer is instructed, however, that at trial he will be required to establish a prima facie case. To do so, he must prove that he engaged in protected activity and the activity in some part motivated his termination.

Therefore, this case is set for hearing on the merits on **Tuesday, February 24, 2004**, at **8:30 a.m.**, in the vicinity of **Orlando, Florida**. The specific courtroom in which the hearing will be held will be designated at a later date. The issues are whether Jahna violated section 105(c) of the Mine Act when it terminated Mr. Spencer on January 16, 2003, and, if so, the damages and costs relating thereto.

In preparation for the hearing, the parties are directed to complete the following on or before **January 23, 2004**: (a) confer on the possibility of settlement and endeavor to stipulate as to all relevant matters which are not in substantial dispute; (b) endeavor to stipulate the issues remaining for hearing, and, if unable to stipulate the issues, exchange written agreements of the issues as contended by the respective parties; (c) exchange lists of exhibits, and, at the request of a party, produce exhibits for inspection and copying; (d) stipulate as to those exhibits which may be admitted into evidence without objection and, as to others, indicate whether the exhibit is accepted as an authentic document; and (e) exchange witness lists with a synopsis of the testimony expected of each witness.

The parties are further directed to file with the undersigned Administrative Law Judge on or before **February 10, 2004**, a preliminary statement setting forth: (a) lists of exhibits and witnesses, together with the parties' synopses of expected testimony; (b) any stipulations entered into; and (c) the parties' statement of the issues.

Any party requiring subpoenas for the attendance of witnesses or the production of documents shall file their requests at least fifteen (15) days in advance of the scheduled hearing.

Any person planning on attending this hearing who requires special accessibility features and/or any auxiliary aids (such as sign language interpreters) must request those in advance (subject to the limitations set forth in 29 C.F.R. § 2706.150(a)(3) and § 2706.160(e).)

David F. Barbour  
Administrative Law Judge  
(202) 434-9980

Distribution: (Certified)

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