

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, Suite 1000
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

July 17, 2002

FELIX MAURICE SYKES,	:	DISCRIMINATION PROCEEDING
Complainant	:	
	:	Docket No. VA 2002-33-D
v.	:	NORT CD 2002-02
	:	
	:	
HAR-LEE COAL COMPANY,	:	Mine ID 44-06966
Respondent	:	No. 10 Mine

DECISION

Appearances: Felix Maurice Sykes, Clintwood, Virginia, *Pro Se*, for the Complainant;
Louis Dene, Esq., Dene & Dene, Abingdon, Virginia, for the Respondent.

Before: Judge Schroeder

Introduction

This case is before me on the Complaint filed by Mr. Felix Maurice Sykes pursuant to Section 105(c)(3) of the Mine Safety Act. The Complaint alleged discrimination by the Respondent in violation of Section 105(c)(1). All the conditions necessary to file a complaint were satisfied by Mr. Sykes. A hearing was scheduled on July 9, 2002, and notice of the hearing was served on both parties. Verification of receipt of the notice was made by telephone approximately one week prior to the hearing.

On July 9, 2002, at the schedule time and place, the hearing was commenced. Mr. Sykes failed to appear even after waiting a reasonable time to allow for difficulties in transportation. Mr. Sykes has failed to apply for a continuance of the hearing or to provide an explanation for his failure to appear.

At the hearing, Mr. Dene provided an offer of proof as to the testimony which would be provided by his four witnesses if they were required to testify. In the absence of objection to the offer of proof, I accept as true the factual matters that Mr. Dene described.

Findings and Conclusions

Complainant was employed by the Respondent as a miner for less than a year. His usual assignment was a roof bolter operator. Mr. Sykes' pay and privileges as a roof bolter operator

have never been reduced by the Respondent. Each time Mr. Sykes has expressed concern about safety, Respondent's mine management has taken reasonable and prompt steps to investigate his concerns and to take appropriate corrective action if necessary. Mr. Sykes' employment was not terminated by Respondent because of expression of safety concerns. Mr. Sykes voluntarily resigned his position with the Respondent after refusing to continue working in the mine. Respondent has not discriminated against Mr. Sykes in violation of Section 105(c)(1) of the Mine Safety Act.

Order

For the foregoing reasons, I find in favor of the Respondent and against the Complainant on the issues in this case. Accordingly, the complaint is **DISMISSED**.

Irwin Schroeder
Administrative Law Judge

Distribution:

Mr. Felix Maurice Sykes, Rt. 1, Box 463, Clintwood, VA 24228 (Certified Mail)

Louis Dene, Esq., Dene & Dene, P.C., Box 1135, 138 Court St., N.E., Abingdon, VA 24210 (Certified Mail)