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UMWA V. SOUTHERN OHIO COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, DC
December 9, 1980

LOCAL UNION 1957, UNITED MINE
WORKERS OF AMERICA,
David Biggs, et al.

Docket No. VINC 77-112

v.

SOUTHERN OHIO COAL COMPANY

DECISION

This discrimination case arises under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §801 et seq. (1976)(amended 1977). The issue is whether six miners 1/ were discriminated against by their employer, Southern Ohio Coal Company, in violation of section 110(b)(1) of that Act. 2/

The administrative law judge found that a large body of water existed in the miners' route to their workplace in the entry at the end of a mantrip; that the miners believed the route was unsafe, complained to mine management about it, and refused to cross it 3/; and that their shift foreman denied them alternate work, which was available, because he believed they were not entitled to refuse to cross the water to work on their regular jobs. The judge ruled that there was no violation of the Act, since the evidence did not establish that these miners were denied alternate work by their employer because of the miners' safety complaints. 4/

1/ The miners' names are David Biggs, Thurmond Adkins, Ruler M. Champe, Curtis Chaney Jr., Donald A. Hunter, and Chester Young.

2/ Section 110(b)(1) provides in part:

No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any

authorized representative of miners by reason of the fact that such miner or representative (A) has notified the Secretary or his authorized representative of any alleged violation or danger ***.

3/ "The record is clear that Applicants' request for their safety committeeman arose out of genuine concern over a safety condition, and was not the outgrowth of some general labor dispute with management."
J.D. 13.

4/ The judge stated that "Whether such actions were discriminatory depends on whether Respondent was motivated by a desire to retaliate against applicants for their reporting of safety complaints...."
J.D. 14 (emphasis added).

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We have difficulty at arriving at the conclusion reached by the judge in light of the evidence and the judge's own findings. The foreman's testimony is clear that the reason he denied the miners alternate work was because they had refused to cross the water to perform their regular jobs. 5/ The judge found that this refusal by the miners was reasonable and in good faith. J.D. 7, 8, 11. 6/ The Union argues that the miners' actions in these circumstances were protected under section 110. We agree. Alternate work was available, was requested, and was denied because the miners refused to work in conditions they believed were unsafe. The miners' actions were protected by section 110 and the foreman's refusal to afford them alternative work violated that section.

Accordingly, the decision of the administrative law judge is reversed and remanded to determine the amounts of back pay and any other relief owed to the miners.

5/ J.D. 14-15, citing Tr. 819-820.

6/ So too was the miners' refusal to take other routes, which they also believed were unsafe. *Id.*

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