

CCASE:
CHAPMAN MERRELL V. PEABODY COAL
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FMSHRC-WDC
SEP 30, 1985

CHAPMAN MERRELL

v. Docket No. KENT 84-250-D

PEABODY COAL COMPANY

BEFORE: Backley, Acting Chairman; Lastowka and Nelson,
Commissioners

DECISION

BY THE COMMISSION:

Peabody Coal Company ("Peabody") has applied for interlocutory review of a Commission administrative law judge's order denying Peabody's motion to dismiss a discrimination complaint filed by complainant, Chapman Merrell. The complaint alleges that Peabody violated section 105(c) of the Federal Mine Safety and Health Act of 1977 (the "Mine Act"), 30 U.S.C. § 815(c), when it bypassed for rehire the laid-off complainant (Merrell), because he had not obtained relevant health and safety training specified in section 115 of the Mine Act, 30 U.S.C. § 825, and 30 C.F.R. Part 48. Peabody filed a motion to dismiss the complaint for lack of timeliness in filing. The judge denied the motion on the grounds that the late filing was justified and that Peabody suffered no prejudice resulting from the delay. On March 28, 1985, the Commission granted Peabody's petition for interlocutory review and stayed further proceedings until otherwise ordered.

In Peabody Coal Company, KENT 82-103-D, etc., 7 FMSHRC (September 30, 1985), and Jim Walter Resources, Inc., SE 84-31-D, etc., 7 FMSHRC (September 30, 1985), we examined the substantive issue presented in this case: whether an operator violates section 105(c) of the Mine Act when it bypasses for hire laid-off individuals who lack relevant health and safety training. We held that such a

policy does not violate section 105(c).

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Accordingly, and without reaching the question of whether the judge erred in denying Peabody's motion, we conclude that Mr. Merrel's complaint fails to state a claim upon which relief may be granted, and we dismiss the case. 1/

Richard V. Backley, Acting Chairman

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

1/ Pursuant to section 113(c) of the Mine Act, 30 U.S.C. § 823(c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.

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Distribution

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