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WILLIE WILLIAMS V. JIM WALTER  
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)  
Office of Administrative Law Judges

WILLIE WILLIAMS, JR.,  
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. SE 91-95-D

v.

BARB CD 88-32

JIM WALTER RESOURCES, INC.,  
RESPONDENT

ORDER OF DISMISSAL

Before: Judge Koutras

Statement of the Case

This proceeding concerns a complaint of discrimination filed by the complainant (Willie Williams, Jr.), against the respondent (JWR) pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977. By letter dated January 25, 1991, and received by the Commission on January 29, 1991, Mr. Williams stated as follows:

I recently received a determination letter from the Mine Safety and Health Administration (MSHA) concerning a discrimination complaint that I filed. MSHA has determined that no violation occurred and reference is made to the time delay in this case. At the time I was contacted by the MSHA Special Investigator, I was hospitalized with a stress related condition which was caused by my employment. I was never interviewed by the special investigator and to my knowledge my complaint was never investigated. To the best of my recollection, my complaint was filed in early 1988. I do not recall receiving a reply from MSHA in 1988.

I had previously filed a number of complaints with MSHA involving my former employer Jim Walter Resources, Incorporated. I was discharged from employment numerous times because of my reporting unsafe conditions at the mine. I was injured while employed with Jim Walter Resources and I continue to suffer from that injury. I am requesting that you consider these conditions that I have raised and allow my case to be heard under the private provision of the law or if necessary an investigation be initiated to collect the necessary facts. If you desire that I provide medical

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evidence to substantiate my condition, I can provide that evidence.

In an undated letter addressed to the Commission's Chief Judge Paul Merlin, and received on May 22, 1991, Mr. Williams stated as follows: "I feel that the company violated several rules under our contract and that they breached the contract in several ways".

A copy of an MSHA complaint form filed by Mr. Williams with MSHA's District 7 Field, Hueytown, Alabama, on May 10, 1988, reflects that he was employed by the respondent as a longwall helper at a salary of \$14.41 an hour. The information on the form further reflects the date of the alleged "discriminatory action" as October 9, 1987, and the "persons responsible" as Personnel Director Steve Dickerson and Longwall Coordinator Trent Trachor.

In a handwritten statement signed by Mr. Williams on May 10, 1988, and attached to the complaint form, he stated that he was discharged from his job, and that "they discharged me because of the legal action that I have filed against the company and the union. I also feel that the company and union got together and arranged my discharge".

A copy of a June 30, 1988, letter addressed to Mr. Williams from MSHA's Chief, Office of Technical Compliance and Investigation, Arlington, Virginia, informed Mr. Williams that after a review of the information gathered during the investigation of his complaint, MSHA made a determination that JWR did not violate section 105(c) of the Act. The letter further advised Mr. Williams of his right to file a complaint on his own behalf with the Commission within 30 days. Mr. Williams did not pursue his complaint further until January 25, 1991, when he filed his instant complaint with the Commission.

JWR filed an answer to the complaint denying any discrimination, and as part of its answer moved for a dismissal of the complaint on the following grounds:

1. The Complaint should be dismissed for failure to state a claim upon which relief may be granted under Section 105(c) of the Mine Safety and Health Act.
2. The complaint is barred by the statute of limitations and by laches.
3. The complainant has failed to exhaust contractual remedies.

4. The complainant's claims are preempted under 301 of the National Labor Relations Act.

5. The complaint should be dismissed in its entirety because it is frivolous and designed to harass the respondent.

6. The complainant has filed several other complaints under 105(c) and all such claims have been dismissed in favor of the respondent.

In further support of its motion, JWR points out that the alleged act of discrimination appears to be a discharge which allegedly occurred on October 9, 1987, nearly four years ago, and that if the complainant had timely filed his complaint JWR would have been in a much better position to investigate and defend against the allegations made in the complaint. However, as a result of the untimely filing, JWR believes it has been prejudiced, and as an example, it cites the fact that Steve Dickerson, the personnel director who is named in the complaint, and who was responsible for enforcing company procedures, is no longer employed by JWR.

#### Discussion

It would appear that Mr. Williams wrote to the Secretary of Labor in July and September 1990, concerning his complaints against JWR. As a result of his letters, MSHA reviewed its files and conducted a personal interview with Mr. Williams at his home in October, 1990. Subsequently, by letter dated December 24, 1990, the Labor Department's Assistant Secretary for Mine Safety and Health, William J. Tattersall, advised Mr. Williams that based on MSHA's review of the matter, "the issues you have raised appear to be the same as those identified in the complaints you previously filed with MSHA under the miner discrimination provisions of the Federal Mine Safety and Health Act of 1977". With regard to the disposition of his prior complaints, Mr. Tattersall advised Mr. Williams as follows:

Each of those complaints have previously been acted upon by MSHA. The last complaint, filed in May 1988, concerned your discharge from Jim Walter Resources. By letter dated June 30, 1988, MSHA responded advising you that your complaint had been investigated to the extent possible and that there was no violation of the Mine Act's discrimination provisions. Throughout the investigation, we found no facts to support a claim of discrimination under the Mine Act. During our most recent contacts with you, no additional information was provided. Accordingly, our previous finding of no discrimination remains unchanged.

As you know, you have the right as a complainant to file a complaint on your own behalf with the Federal Mine Safety and Health Review Commission (Commission). However, as you were advised in our letter of June 30, 1988, this right must be exercised within 30 days of notification that MSHA has found no act of discrimination. While this filing period has clearly passed, you advised us in our meeting with you in October that you were either hospitalized or medically incapacitated, or your medical condition may have diminished your capability to fully participate in the exercise of your rights.

If you believe that there is sufficient medical evidence to support your incapacity at that time, you might consider presenting this evidence and any other evidence of extenuating circumstances directly to the Commission, requesting that your complaint be accepted by them under Section 105(c)(3).

As a result of the Tattersall letter, Mr. Williams apparently obtained copies of his prior May 10, 1988, MSHA complaint, and MSHA's June 30, 1988, adverse determination letter through a Freedom of Information Act request made to MSHA's Arlington, Virginia office, and his Commission complaint of January 25, 1991, followed. In his complaint, Mr. Williams asserted that he did not recall receiving MSHA's June 30, 1988, determination letter, which states in part that his complaint was investigated "to the extent possible" without his cooperation. Mr. Williams further asserted that "at the time I was contacted by the special investigator, I was hospitalized with a stress related condition which was caused by my employment. I was never interviewed by the special investigator and to my knowledge my complaint was never investigated".

In view of Mr. Williams' assertions that he had no knowledge of the disposition of his May 10, 1988, complaint, I issued an Order to Show Cause on August 8, 1991, affording the parties an opportunity to submit information explaining the circumstances of that complaint, the timeliness of Mr. Williams' appeal to the Commission, and any documentation concerning any prior complaints. Based on the information filed by the parties in response to my order, it would appear that Mr. Williams filed the following prior complaints:

Case No. BARB-CD-82-11

This case concerned a complaint by Mr. Williams that his foreman, mine foreman, and others "have threatened me in a way that I feel they will try and knock me off". Mr. Williams stated that he was a belt repairman, and he alleged that he complained about the tying up of large cables with small wire, and working

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under unguarded belts. He further alleged that "since this time I have been fired out of the mine", and that mine management tried to remove him from his job "because I complain about too many things".

By letter dated March 9, 1982, MSHA advised Mr. Williams that after investigation of his complaint and a review of the information gathered during the investigation, MSHA determined that a violation of section 105(c) of the Act did not occur. The letter also advised Mr. Williams of his right to further pursue this determination by filing a complaint on his own behalf with the Commission within 30 days. There is no information that Mr. Williams filed any further complaint with the Commission.

Case No. BARB-CD-82-39

This case concerned a complaint filed by Mr. Williams with MSHA on September 8, 1982. Mr. Williams had received a written reprimand on September 2, 1982, for violating a company rule by operating a track jeep at an unsafe rate of speed, and a copy of an accident report reflects that an employee was injured when the jeep collided with a manbus.

Mr. Williams characterized his complaint as a "section 105(G)" complaint, and he alleged that he was reprimanded because he had previously filed another "section 105(g)" complaint against the driver of the manbus involved in the accident (the driver was identified as a foreman). Mr. Williams further alleged that other union personnel had been involved in accidents with management personnel, but only he was singled out for a reprimand. He claimed disparate treatment because only he and not the manbus driver was reprimanded, and he also claimed that management "would like to get back" at him because of his prior "105(g)" complaint, and that the union did not come to his defense.

MSHA investigated the complaint, and by letter dated April 25, 1983, Mr. Williams was advised of MSHA's determination that a violation of section 105(c) had not occurred. The letter also advised Mr. Williams of his right to appeal that determination by filing a complaint with the Commission within 30 days. There is no information that Mr. Williams filed any complaint with the Commission.

Case No. BARB-CD-84-34

This case concerned a complaint filed by Mr. Williams with MSHA on July 9, 1984. Mr. Williams invoked his individual safety grievance rights by filing the complaint against the general mine foreman, his shift foreman, and two union co-workers who worked on his shift. Mr. Williams alleged that the two co-workers were trying to injure him on the job by engaging in unsafe acts, and

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that one of them had cursed him and threatened to beat him up. He further alleged that his request to be transferred to another work area under a different foreman was denied, and that his foreman had threatened to fire him if he complained to the "safety men". He also alleged that the two co-workers engaged in horseplay, that they conspired to have him moved to another job, and otherwise threatened and harassed him without intervention by the foreman. Mr. Williams stated that he did not feel that he could continue to work under these conditions and he requested to be paid for all lost time while he was off work.

On July 25, 1984, Mr. Williams filed a regular union grievance "demanding that management make every effort to work me in my classification that I bidded on". The grievance was settled by the union and management after management agreed "to work the grievant in his bid classification to the extent that it is practicable to do so".

On August 6, 1984, Mr. Williams amended his July 9, 1984, MSHA complaint and he alleged that after working four years on the same job, management disqualified him from the job, cut his pay from Class 4 to Class 1, and placed him in jobs which were unsafe and hazardous. He claimed that his union contractual rights were violated.

In a letter dated August 30, 1984, from JWR to MSHA's special investigator, JWR supplied the investigator with a doctor's statement of August 8, 1984, reflecting that Mr. Williams was hospitalized under the care of Birmingham Psychiatry, P.A., on August 7, 1984. JWR also supplied the investigator with copies of the July 25, 1984, grievance reflecting a settlement of the dispute.

In a letter dated September 11, 1984, from JWR to MSHA's special investigator, JWR informed the special investigator that Mr. Williams was having problems working with other union coworkers on the belt crew and that on July 5, 1984, after further arguments with his crew, and at his request, Mr. Williams was reassigned. However, he was absent from work about two weeks for medical reasons, and during this time, management decided that it would be best to separate Mr. Williams from the belt crew with whom he was having trouble.

JWR further stated to the investigator that upon Mr. Williams' return to work after his hospitalization he informed his foreman that he did not want to be reassigned and filed the grievance stating his desire to work in the classification he bid on, which was belt repairman. JWR pointed out that pursuant to the grievance settlement, Mr. Williams was reassigned to the belt repairman position, and although he suffered a loss of pay amounting to \$15.90, for three shifts, that issue was also settled through the grievance procedure.

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JWR denied that Mr. Williams was ever assigned to any jobs that were unsafe, and it pointed out that Mr. Williams was aware of the fact that he had a contractual right to remove himself from any condition he believed to be unsafe, but did not do so. Finally, JWR pointed out that Mr. Williams believed that the company had violated his union-management contractual rights. Citing Lane v. Eastern Associated Coal Corporation, 2 MSHC 1082 (1980), and Harry P. Gilpin v. Bethlehem Mines Corporation, 6 FMSHRC 47 (January 1984), JWR took the position that such contractual matters are not within the jurisdiction of the Commission.

MSHA investigated the complaint, and by letter dated October 10, 1984, Mr. Williams was advised of MSHA's determination that a violation of section 105(c) had not occurred. The letter also advised Mr. Williams of his right to appeal that determination by filing a complaint with the Commission within 30 days. There is no information that Mr. Williams filed any complaint with the Commission.

Case NO. BARB-CD-86-38

This case concerned a complaint filed by Mr. Williams with MSHA on April 17, 1986. Mr. Williams alleged that coal was being cut with the methane monitor showing 1.7 and 1.8 percent methane, that he complained about this to the longwall coordinator, and that he withdrew himself from the mine on several occasions. He also alleged that his foreman tried to injure him by activating a longwall shearer valve while he (Williams) was near the pan line.

A copy of a disciplinary action dated April 16, 1986, supplied by JWR, reflects that Mr. Williams was suspended for five days with intent to discharge, for the following reason: "Violation of work rule #1 and work rule #7, cursing, intimidating and insubordinate conduct toward his supervisor in front of entire crew and failure to obey a direct order".

In a letter dated May 28, 1986, to MSHA's special investigator, JWR disputed Mr. Williams' allegations, and after investigation, MSHA advised Mr. Williams by letter dated June 12, 1986, that the information received during its investigation did not establish a violation of section 105(c) of the Act. The letter also advised Mr. Williams of his right to appeal this determination by filing a complaint with the Commission within thirty days. There is no information that Mr. Williams filed any further complaint.

NLRB Complaint

In addition to the aforementioned MSHA complaints, Mr. Williams filed a complaint on July 3, 1986, with the National Labor Relations Board against the United Mine Workers of America,

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and the basis for his charge is stated as follows in the complaint form which he signed:

On or about April 17, 1986, the above-named labor organization through its officers, agents and representatives failed to properly process Willie Williams grievance because of his race and internal union political activities.

The medical information supplied by Mr. Williams reflects the following:

1. A statement of August 8, 1984, addressed to JWR by Doctor James M. Lee, Birmingham, Psychiatry, P.A., Birmingham, Alabama, confirming that Mr. Williams was admitted to Baptist Medical Center, Birmingham, Alabama, on August 7, 1984, and that he was currently hospitalized.
2. A Physical and History Report prepared by Doctor Lee on August 7, 1984, in which Dr. Lee recorded his "impression" of Mr. Williams' condition as "Adjustment reaction with depression and anxiety. Chronic low back syndrome". The doctor noted that Mr. Williams would undergo physical and psychiatric evaluation, and that appropriate medication would be prescribed. The report reflects that Mr. Williams reported that he strained his back in August, 1983, was seen at a hospital emergency room, and that he has taken medication in the past for his back complaints.
3. A consultation report prepared by Dr. Sue Trant, PHD, on August 20, 1984, in which the following diagnostic impressions are recorded: "1. Adjustment disorder with mixed emotional features including anxiety, depression, anger and hypersensitivity. 2. Personality disorder with dependent and passive aggressive features".
4. A consultation report prepared by Dr. Trant on June 21, 1987, in which the following diagnostic impressions are recorded: "1. Rule out major depression. 2. Rule out melancholia with significant anxiety. Psychological factors affecting physical condition. 4. Mixed personality disorder".

5. A July 1, 1987, statement addressed to Dr. Lee by the respondent's insurance benefits claims department (Aetna Life and Casualty) certifying Mr. Williams for admission to the Birmingham Baptist Medical Center.

6. A September 14, 1987, statement addressed to JWR by Dr. Tyree J. Barefield-Pendleton, Bessemer, Alabama, stating that Mr. Williams was under the doctor's care for low back pain and was unable to report for work because of his illness. The doctor stated that Mr. William "has been disabled since 5/14/87, and he is still disabled".

7. A November 15, 1989, statement addressed to the United Mine Workers of America by Dr. Lee stating that Mr. Williams has been a patient under his care beginning August 7, 1984, and that he was last seen in the doctor's office on November 15, 1989. The statement reflects the doctor's opinion that Mr. Williams is disabled and unable to be gainfully employed, and that "an integral part of his health problems stem from his job conflicts". The statement also reflects that Mr. Williams was drawing social security disability benefits since 1987.

8. An October 15, 1987, letter from Dr. Lee to an attorney summarizing Mr. Williams' hospitalization and treatment. With respect to his 1987 hospitalization, Dr. Lee states that Mr. Williams was hospitalized from June 15, 1987 through June 30, 1987. Dr. Lee noted several follow-up office visits, and the summary includes a statement by Dr. Lee that Mr. Williams "reported that he was feeling extremely frustrated in his attempts to deal with his company concerning his benefits".

#### Findings and Conclusions

Mr. Williams' Prior 1982-1986 Complaints.

After careful review of all of the information submitted by the parties, I find no reasonable basis for revisiting any of the prior 1982 through 1986 complaints filed by Mr. Williams with MSHA. It seems clear to me from the information provided that MSHA investigated each of those complaints and concluded that JWR

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had not violated section 105(c) of the Act. Further, the information submitted by the parties, including Mr. Williams, includes copies of MSHA's determination letters advising Mr. Williams of the results of its investigations and informing him of his right to file further complaints with the Commission if he so desired. There is no evidence that Mr. Williams filed any such complaints, and he does not claim that his complaints were not investigated or that he was not advised of MSHA's dispositions of those complaints. I take note of the fact that in his statement filed September 12, 1991, in response to my show cause order, at page 5, Mr. Williams acknowledges that in each instance where he alleged he was terminated prior to July 1987, he was restored to duty through the grievance procedure. Under the circumstances, I conclude and find that Mr. Williams' attempts to reassert these prior complaints and incorporate them by reference with his most recently filed complaint with the Commission are clearly untimely and they are rejected.

Mr. Williams has submitted a copy of a November 15, 1990, internal MSHA memorandum authored by MSHA headquarter special investigator Wilbert B. Forbes, the investigator who personally contacted and interviewed Mr. Williams in response to his July and September 1990, letters to the Secretary of Labor. Mr. Forbes is critical of the "lack of thoroughness" with respect to MSHA's field investigations of some of Mr. Williams prior complaints, but he concludes that "due to the passage of time little if anything can be done". I conclude and find that the personal opinions of Mr. Forbes with respect to MSHA's prior investigations provide no basis for allowing these prior complaints to be reasserted in the instant proceeding, and any suggestion to the contrary by Mr. Williams is rejected.

#### Mr. Williams' Present Complaint

In his present Commission complaint, Mr. Williams seeks an opportunity to pursue his discharge of October 9, 1987, by JWR. As noted earlier, at the time he filed his complaint with MSHA, he claimed that he had been discharged "because of the legal action that I have filed against the company and union. I also feel that the company and union get together and arranged my discharge". He named company personnel director Steve Dickenson and longwall coordinator Trent Trachor as the company officials responsible for this discharge. As part of his Commission complaint, Mr. Williams stated as follows: "I feel that the company violated several rules under our contract and that they breached the contract in several ways".

I take note of the fact that in his prior MSHA complaint, as well as the instant Commission complaint, Mr. Williams never alleged that his discharge was in any way connected with any safety complaints or protected activity on his part. In view of the untimely filing of the complaint with the Commission (three

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years after it was filed with MSHA, and four years after the discharge), and the absence of any allegation that the discharge was safety related, JWR moved for a summary dismissal of the complaint.

In addressing the question of the timeliness of his complaint, Mr. Williams seeks to excuse his untimely filing by asserting that he was hospitalized with a stress condition in 1987, when he was contacted by MSHA's special investigator, that he was never interviewed by the investigator, and that he could not recall ever receiving a copy of MSHA's determination letter advising him of the results of the investigation of his complaint. In fairness to Mr. Williams, he was afforded an opportunity to document these claims, and in response to my orders both he and the respondent have submitted information relative to his condition at the time of his complaint, as well as an assortment of additional matters.

With regard to any protected safety rights, Mr. Williams, through his counsel, suggests that his discharge during a long-term disability "might be a pretext and a sham". In addition, Mr. Williams takes issue with MSHA's investigation of his complaint, and the manner in which his union represented him during an arbitration related to his discharge. Mr. Williams alleges that the union failed to reschedule his arbitration hearing despite being told that he was medically disabled. He also alleges that he was unable to appear at the Arbitration hearing.

With regard to his discharge, based on the information supplied by Mr. Williams, it would appear that the October 9, 1987, date of termination is in fact the day that the arbitrator who presided over his discharge grievance decided the grievance in JWR's favor. The information supplied by Mr. Williams reflects that JWR sent him a letter on August 28, 1987, suspending him with intent to discharge for a violation of the labor-management contract of 1984 and a company work rule relating to unsatisfactory work attendance. The arbitration decision reflects that the proposed discharge proceeded to the 24-48 hour meeting stage, and then went to arbitration by the union. Contrary to Mr. Williams' assertion that the union failed to reschedule the arbitration hearing, the arbitration decision, on its face, reflects that the hearing was originally set for September 14, 1987, and although Mr. Williams did not appear at that time, the union asked for a continuance, and it was granted over the objection of JWR. The hearing was rescheduled and held on October 1, 1987, and the grievance decision reflects that Mr. Williams appeared and participated in the hearing.

I have reviewed the arbitration decision sustaining Mr. Williams' discharge, and nowhere is there any mention of any safety complaints or protected activity by Mr. Williams as the

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reason for the discharge. The sole issue in that case was whether or not the work absences which prompted JWR to suspend and discharge Mr. Williams were justified because of his asserted work-related illnesses and injuries. I take note of the fact that the arbitrator was the same individual who had previously ordered Mr. Williams reinstated after a previous discharge in October, 1986, for absenteeism. In that previous proceeding, although Mr. Williams was reinstated, the arbitrator observed that Mr. Williams "appears to be a chronic absentee".

With regard to MSHA's investigation of his complaint, Mr. Williams states that he did not meet with MSHA's special investigator Dennis Ryan because "he was simply unable to do so". In an undated affidavit, Mr. Williams suggests that he never met with Mr. Ryan because he was under a doctor's care and was dysfunctional as the result of treatment for depression. However, the aforementioned Forbes Memorandum reflects that during a personal interview with Mr. Forbes, Mr. Williams acknowledged that he was contacted by Mr. Ryan, but refused to speak with him because he was not sure of his identity and whether or not Mr. Ryan would be fair in the conduct of his investigation. Mr. Ryan confirmed to Mr. Forbes that Mr. Williams refused to talk to him. This information is corroborated by a July 8, 1990, memorandum by Mr. Ryan, a copy of which was supplied by Mr. Williams, in which Mr. Ryan confirms that Mr. Williams would not meet with him and that he provided no witnesses or information concerning his complaint.

I take further note of the fact that in the October, 1987, grievance proceeding, the arbitrator expressed some credibility reservations with respect to some of the medical evidence submitted by Mr. Williams in defense of his absences from work, and noted that Mr. Williams stated that he "had no intention of ever returning to work and that he had filed for total disability". With regard to the initial continuation of the grievance hearing, the arbitrator observed that Mr. Williams was given the benefit of the doubt when the continuance was granted. The arbitrator also made reference to the fact that while he was attempting to obtain doctor's excuses to justify a continuance, Mr. Williams was at the same time making court appearances and testifying on September 8, and 16, 1987, in connection with certain workers' compensation claims he had filed against JWR. The arbitrator observed that "it seems clear that Mr. Williams was able to attend to all his business except to appear" at the initial grievance hearing.

After careful review of all of the information submitted by Mr. Williams, I am not convinced that his treatment and hospitalization for stress and his chronic back ailments mitigate or excuse his failure to timely pursue his complaint further before this Commission. Mr. Williams makes no claim that he was ignorant of his rights and remedies under the Mine Act. His

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claim is that he was being treated for stress and could not recall receiving MSHA's determination letter which included information concerning his right to file a further complaint with the Commission. However, given the number of complaints and grievances Mr. Williams has filed over the years, I cannot conclude that he was unaware of his rights and remedies. Indeed, Mr. Williams makes no claim that he never received any of the prior MSHA adverse determination letters in which he was specifically informed of his right to file further complaints on his own behalf with the Commission within 30 days if he disagreed with MSHA's determination.

In David Hollis v. Consolidation Coal Company, 6 FMSHRC 21 (January 9, 1984), aff'd mem., 750 F.2d 1093 (D.C. Cir. 1984) (table), the Commission affirmed a dismissal of a miner's discrimination complaint filed six months after his alleged discriminatory discharge. In that case, the Commission stated that "Tardiness questions must be resolved on a case-by-case basis, taking into account the unique circumstances of each situation", 6 FMSHRC 24.

In Ernie L. Bruno v. Cyprus Plateau Mining Company, 10 FMSHRC 1649 (November 1988), Commission Review Denied January, 1989, aff'd, No. 89-9509 (10th Cir., June 5, 1989) (unpublished), Commission Judge John Morris found that a complaint filed more than four and one-half years after the alleged act of discrimination was untimely. He concluded that the company officials who investigated and made the termination decision no longer worked for the company, and that it was questionable whether these individuals would have a present recollection of the events in question.

In Joseph W. Herman v. IMCO Services, 4 FMSHRC 2135, 2138-2139, (December 1982), the Commission observed that the placement of limitations on the time-periods during which a plaintiff may institute legal proceedings is primarily designed to assure fairness to the opposing party by:

. . . preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.

Mr. Williams suggests that allowing him to proceed with his complaint would only result in minimal prejudice to the respondent "because the business records still exist, and the issues are narrow". The respondent, however, points out that personnel director Steve Dickerson, the individual responsible

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for enforcing the company rules at the time of Mr. Williams' discharge, is no longer employed by JWR. Further, JWR maintains that if the filing deadline had been met by Mr. Williams, it would have been in a much better position to investigate and defend against the allegations made in the complaint. JWR believes that it would be prejudiced if it is now required to defend against an untimely claim based upon a discharge which occurred four years ago. I agree.

After careful examination of all of the available information, and aside from the fact that the complaint is untimely, I believe that Mr. Williams' complaint against JWR is the result of a longstanding contractual dispute connected with his asserted job-related injuries, disability compensation, and workers' compensation claims. Under the circumstances, I reject Mr. Williams' attempts to "bootstrap" these disputes into a viable discrimination complaint pursuant to section 105(c) of the Mine Act. Accordingly, I conclude and find that the complaint should be dismissed.

ORDER

In view of the foregoing findings and conclusions, the complaint filed by Mr. Williams IS DISMISSED, and his claims for relief pursuant to section 105(c) of the Mine Act ARE DENIED.

George A. Koutras  
Administrative Law Judge