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THOMAS P. GATES V. GOUVERNEUR TALC  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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THOMAS P. GATES, : DISCRIMINATION COMPLAINT  
Complainant :  
v. : Docket No. YORK 93-135-DM  
: NE-MD-93-06  
: GOUVERNEUR TALC COMPANY, : #1 Mine  
Respondent : Mine ID: 30-00611

DECISION

Appearances: Thomas P. Gates, pro se, Hailesboro, New York,  
for Complainant;  
James J. Dean, Esq., Putney, Twombly,  
Hall & Hirson, New York, for Respondent.

Before: Judge Feldman

This matter is before me for consideration based upon a discrimination complaint filed by Thomas P. Gates against the corporate respondent, Gouverneur Talc Company. Gates is bringing this discrimination action in his own behalf pursuant to Section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(3) (the Act). Gates initiated this action after the Mine Safety and Health Administration (MSHA) conducted an investigation and concluded that there was no section 105(c) discrimination violation with respect to Gates' March 2, 1993, employment discharge by the Gouverneur Talc Company.

This case was heard in Watertown, New York, on November 9, 1993. At the hearing Gates called Thomas Cogan and Kevin Hurley, who are officials with Local 4979 of the United Steel Workers of America. Gates also called Harold Boncolln, the respondents' mine superintendent, and Gary Lutz, who was discharged with Gates shortly after they had an altercation on February 10, 1993. The respondent relied upon the testimony of Terry Jacobs, the respondent's safety director, and Greg Holly and Gary Rust, employees of the respondent who witnessed the altercation between Gates and Lutz. At the culmination of the hearing, the parties elected to make closing statements in lieu of filing posthearing briefs. After considering the evidence of record and the closing presentations, I issued a bench decision which is formalized herein.

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The chronology of events are not in dispute and can be briefly summarized. Gates' employment with the Gouverneur Talc Company as a maintenance mechanic began in April 1984. As a maintenance mechanic, Gates was responsible for all maintenance with the exception of electrical and vehicle repair. Gates served as a union safety man for approximately one year during the period 1986 through 1988. Gates also served as a United Steel Workers grievance committeeman for local 4979 for approximately four years prior to his discharge on March 2, 1993. As a union committeeman, Gates dealt primarily with contract interpretation issues and was not actively involved in union safety related issues or complaints.

Gates is not alleging that his activities as a union safety man or as a union committeeman in any way contributed to his March 2, 1993, termination. The termination occurred shortly after Gates' February 10, 1993, altercation with Gary Lutz who was also discharged for fighting. (Tr. 21-22). Rather, Gates maintains that the discrimination complaint he filed with the Mine Safety and Health Administration on April 8, 1993, after he was permanently discharged on March 2, 1993, tainted his August 5, 1993, arbitration hearing because the arbitrator heard testimony concerning the fact that the complaint had been filed. (Tr. 22).

Gates' April 8, 1993, discrimination complaint primarily alleges breaches of the union-management labor contract concerning such matters as grievance procedures, eligibility to vacation pay after discharge, and termination of hospital insurance after discharge. The respondent provided testimony on these issues. For example, Lutz' company health insurance was terminated after Gates' health insurance because Lutz received worker compensation benefits as a result of his injuries sustained in the altercation with Gates. The respondent was legally obligated to retain Lutz in its health insurance program while Lutz was a worker compensation recipient.

The focal point of this case is the altercation between Gates and Lutz which occurred on February 10, 1993. On that morning Gates was repairing a cable from approximately 7:00 a.m. until shortly after 8:00 a.m. The mine foreman requested Gates to assist Lutz with repairing track after he finished the cable repair work. However, Gates decided that there was not enough time to travel to Lutz' work area before the 9:00 a.m. break period. Therefore, Gates decided to go to the lunchroom after repairing the cable until the morning break was finished. Lutz became annoyed when he learned that Gates was in the lunchroom. Lutz and Gates argued in the lunchroom at which time Lutz accused Gates of not showing up for work. Lutz also threatened to inform management that he did not want to work with Gates anymore.

After the break, Holly, Rust, Lutz, and Gates traversed the tunnel to the work site. Lutz was unloading material from a flatbed when Gates approached him and repeatedly called him a "snitch" and "squealer." Lutz replied that he had "enough of [Gates'] shit and [Lutz] started towards [Gates]." (Tr. 85). An altercation then ensued, although Lutz has no recollection of the events. According to witnesses Holly and Rust, Lutz went for Gates and the two began pushing and shoving each other. Lutz ultimately fell on his back in the mud across the track and sustained cracked ribs. Lutz was subsequently admitted to the hospital where he experienced heart stoppage which may have been related to his traumatic chest injuries. Lutz required a pacemaker, however, it is not clear whether the cardiac condition was directly related to the injuries sustained at the mine. (Tr. 83).

On February 16, 1993, the respondent served written notice on Gates, pursuant to paragraph 77 of the union agreement, that he was provisionally discharged for fighting with another employee on February 10, 1993. (Res. Ex. 2). Gates contested this action and hearings were held in accordance with the requirement of the union contract. The evidence considered at the hearings included information obtained from witnesses Holly and Rust as well an interview with Lutz in the hospital. On March 2, 1993, Gates' provisional discharge was converted to a permanent discharge. (Res. Ex. 18). A union grievance filed on March 4, 1993, was denied by the respondent. This matter became the subject of an arbitration proceeding. The arbitration hearing was conducted on August 5, 1993. On September 10, 1993, Arbitrator Mona Miller issued a decision wherein she denied the union grievance and concluded that the respondent had discharged Thomas Gates for just cause. (Res. Ex. 19a).

In order to prevail in a discrimination case, the complainant must demonstrate that he participated in protected activity and that there is some nexus between the protected activity and the adverse action complained of. Secretary on behalf of Pasula v. Consolidation Coal Co., 2 FMSHRC 2786, 2797-2800 (October 1980), rev'd on other grounds sub nom., Consolidation Coal Co. v. Marshall, 663 F.2d 1211 (3rd Cir. 1981); Secretary on behalf of Robinette v. United Castle Coal Co., 3 FMSHRC 803, 817-818 (April 1981). Alleged adverse actions associated with alleged violations of Gates' rights under the union contract, such as issues pertaining to hospital insurance and vacation pay, are beyond the scope of this proceeding. It is clear that the only pertinent adverse action in this matter, i.e., Gates' permanent discharge on March 2, 1993, could not have been related to his subsequent discrimination complaint filed with the Mine Safety and Health Administration on April 8, 1993. Consequently, I issued the following bench decision, with non-substantive edits, dismissing Gates' discrimination complaint.

In addressing the issues in this case, I wish to point out that to prevail on a discrimination complaint under Section 105(c) of the Mine Act, the complainant must demonstrate that he or she has engaged in protected activity, and that the adverse action, in this case Gates' termination, was in some way motivated by the protected activity.

Although Gates indicated that he was a union grievance committeeman from 1989 through his termination on March 2, 1993, and that he was a safety committeeman for approximately one year during the period 1986 through 1988, he has conceded that he was not discriminated against for these activities. Thus, his termination was not in any way motivated by these activities.

Moreover, it is important to note that Gary Lutz, who was also terminated for his role in the altercation in issue, was never a grievance or safety committeeman. Therefore, the fact that Lutz, who had no history of safety related or grievance committee activities, was also terminated is further evidence that Gates was not singled out for his prior safety or union related activities.

The central issue in this proceeding is the February 10 1993, altercation between Gates and Lutz. I am confident that Gates is a sincere individual and that he had no intention of contributing in any way to Lutz' injuries. However, when Gates made remarks about Lutz' being a "snitch," he knew or should reasonably have anticipated that such remarks could result in an altercation. This was apparently the basis for his termination by the respondent.

The thrust of Gates' case is that his discrimination complaint filed April 8, 1993, approximately one month after his permanent discharge on March 2, 1993, somehow tainted his August 5, 1993, arbitration hearing. I find the record devoid of any evidence that the arbitrator's knowledge that Gates had filed a Mine Safety and Health Administration discrimination complaint influenced her arbitration decision. Moreover, it was appropriate to reference Gates' discrimination complaint in the arbitration proceeding as the complaint is relevant to Gates' state of mind and whether Gates felt that the company's discharge was motivated by his alleged past protected activities under the Mine Act rather than his altercation with Lutz.

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In reaching a conclusion in this case, I note that deciding who was primarily at fault in the altercation between Gates and Lutz is beyond the jurisdiction of this court. My role is not to determine whether Gates, Lutz or both were justly discharged. Rather, my jurisdiction is limited to the issue of whether Gates was discharged for any past activities which can be construed as protected activities under the Mine Act.

In the current case, the only protected activity alleged by Gates is the Mine Safety and Health Administration complaint that he filed. As this complaint was filed after his employment termination had become permanent, I am unable to conclude that Gates' discharge was in any way motivated by his discrimination complaint or any other protected activity. This decision has no bearing on any rights or benefits Gates may claim under any other Federal statute or as a result of any alleged breach of union contract.

In summary, my decision in this matter solely relates to the discrimination issues within the parameters of the Mine Safety and Health Act. As such, Gates' discrimination complaint against the Gouverneur Talc Company is dismissed. (Tr. 159-163).

ORDER

Accordingly, the discrimination complaint filed by Thomas P. Gates against the Gouverneur Talc Company in Docket No. YORK 93-135-DM IS HEREBY DISMISSED.

Jerold Feldman  
Administrative Law Judge

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