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JOHN MATALA V. CONSOLIDATION COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
April 5, 1979

JOHN MATALA,
Applicant

Docket No. MORG 76-53
v. Appeal No. IBMA 76-96

CONSOLIDATION COAL COMPANY,
Respondent

DECISION

This case arises under the Federal Coal Mine Health and Safety Act of 1969 ("the 1969 Act"). 1/ The issue is whether the Commission should review a discrimination claim brought by John Matala, a miner employed by Consolidation Coal Company.

Matala showed evidence of development of pneumoconiosis (black lung) and on March 1, 1975, he exercised his statutory right under the 1969 Act to voluntarily transfer from his continuous mining machine operator's position to that of a general laborer's position in an area of the mine with a lower coal dust level. 2/ Before his transfer, Matala had been earning $55.00 per day, the standard daily wage rate for a continuous mining machine operator. After his transfer, the Company continued to pay Matala $55.00 per day. On December 6, 1975, the National Bituminous Coal Wage Agreement of 1974 increased the standard daily wage rate for continuous mining machine operators to $57.20. Matala continued to be paid $55.00 per day, however.

Matala then filed an application for review of alleged discrimination with the Secretary of the Interior under section 110(b)(2) of the 1969 Act, claiming that the Company's failure to pay him the wages of a

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1/ 30 U.S.C. $801 et.seq. (1976)(amended 1977). This case presents

no issue under the Federal Mine Safety and Health Act of 1977, 30 U.S.C.A. $801 et seq. (1978).

2/ Section 203(b)(2) and (3) of the 1969 Act provided, in part:

> (2) [A]ny miner who ... shows evidence of the development of pneumoconiosis shall be afforded the option of transferring from his position to another position in any area of the mine, for such period or periods as may be necessary to prevent further development of such disease, where the concentration of respirable dust in the mine atmosphere is not more than 1.0 milligrams of dust per cubic meter of air....
>
> (3) Any miner so transferred shall receive compensation for such work at not less than the regular rate of pay received by him immediately prior to his transfer.

continuous mining machine operator after December 6, 1975, violates section 203(b)(3) of the 1969 Act and results in discrimination against him in violation of section 110(b)(1)(B) of that Act. 3/ On May 5, 1976, Administrative Law Judge Malcolm Littlefield, assigned to hear Matala's case, dismissed the application for review. Matala appealed to the Secretary of Interior's Board of Mine Operations Appeals. 4/ For the reasons set forth below, we conclude that we should not review claims under section 110(b) of the 1969 Act of alleged violations of section 203(b)(3) of the Act, and therefore we affirm the dismissal.

The 1969 Act was amended in 1972 by the Black Lung Benefits Act, 30 U.S.C. $901 et seq. (1976). Section 428 of the Black Lung Benefits Act, 30 U.S.C. $938, provides, in part:

> (a) No operator shall discharge or in any other way discriminate against any miner employed by him by reason of the fact that such miner is suffering from pneumoconiosis...
>
> (b) Any miner who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section, or any representative of such miner may, within ninety days after such violation occurs, apply to the Secretary [of Labor] for a review of such alleged discharge or discrimination ....[Emphasis added.]

3/ Section 110(b)(1) and (2) of the 1969 Act provided, in relevant part:

> (1) No person shall discharge or in any other way discriminate against ... any miner ... by reason of the fact that such miner ... (b) has filed, instituted, or caused to be filed or instituted any proceeding under this Act...
> (2) Any miner ... who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection may, within thirty days after such violation occurs, apply to the Secretary [of Interior] for a review of such alleged discharge or discrimination .... [Emphasis added.]

4/ The appeal is before this Commission for disposition under section 301, Federal Mine Safety and Health Amendments Act of 1977, 30 U.S.C.A. $ 961 (1978), under which the Secretary of Interior's adjudicative functions under the 1969 Act were transferred to the Commission.

The Administrative Law Judge held that section 428 of the Black Lung Benefits Act was exclusively applicable to Matala s claim and he therefore dismissed the application for review. He ruled that the claim should have been filed with the Secretary of Labor under section 428, rather than with the Secretary of Interior under section 110(b) of the 1969 Act. The judge relied primarily on the language of the Secretary of Interior's Board of Mine Operations Appeals decision in Higgins v. Old Ben Coal Corporation, 3 IBMA 237, 1973-1974 OSHD %18,228 (1974), appeal dismissed as untimely filed. No. 77-1363 (D.C. Cir. June 20, 1977), that:

> [S]ince there is a specific statutory provision for review of discharge and/or discrimination of a miner based upon the fact that such miner suffers from pneumoconiosis, as here alleged, we need not speculate whether, in the absence of such provision, this Board could or should assume jurisdiction under some other provision of the Act, specifically section 110(b). We think it highly unlikely that Congress intended to confer jurisdiction upon both the Secretary of Labor and the Secretary/of Interior pertaining to the same subject matter within the confines of the same Act.

3 IBMA at 245.

On appeal, Matala argues that because he exercised his transfer right under section 203(b)(2) of the 1969:Act, he instituted a proceeding under the 1969 Act and thus a failure to pay him at the wage rate of his old job classification is discrimination in violation of section 110(b) of the 1969 Act.

We conclude, however, that Matala's allegation of discrimination should be resolved under the extensive provisions of section 428(b) of the Black Lung Benefits Act, which are enforced by the Secretary of Labor, not the Commission. Despite Matala's attempt to characterize this dispute as a section 110(b) discrimination claim, his application raises issues of discrimination related exclusively to rights of miners afflicted with pneumoconiosis. Congress has provided a more specific remedy in the Black Lung Benefits Act for claims of discrimination based on pneumoconiosis and there is no need for this Commission to apply the more general provisions of section 110(b) of the 1969 Act in order to provide Matala with a remedy for any discriminatory practices which might be present in this case. 5/

5/ We do not reach the question of whether discrimination actually existed in this case and we reserve judgment on whether we would reach

a different result if claims like these were not entertained under section 428 of the Black Lung Benefits Act. See Higgins v. Old Ben Coal Company, No. 76-BLA-633 (Labor Dept. Office of ALJ's, March 21, 1977), aff'd, 584 F.2d 1035 (D.C. Cir. 1978), pet. for cert. filed, 47 U.S.L.W. 3587 (February 20, 1979) (No. 1288). We note in that regard that a claim based on these circumstances was in fact recently adjudicated by the Department of Labor under section 428 of the Black Lung Benefits Act. John Matala v. Consolidation Coal Company, No. 77-BLA-1415 (January 5, 1978), appeal pending. No. C780035W (N.D. W. Va.).

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The judge's decision is affirmed.