JOHN L. QUICK

v. Docket No. 92-DOH-503

WEST VIRGINIA DIVISION OF HIGHWAYS

DECISION

Grievant, John L. Quick, employed by the West Virginia Division of Highways (Respondent or DOH) as a Mechanic III, initiated grievance proceedings on February 6, 1992, at which time he complained of "dangerously unsafe working conditions inside the WV DOH Equipment Division facility. Specifically, I request the discontinuance of air pollution caused by equipment and vehicular exhaust from gas, gasoline, and diesel powered products." Grievant requested for relief that DOH provide fresh air ventilation and exhaust, fume, dust and smoke extraction, and the cessation of gas, gasoline, and diesel powered equipment within the facility, the provision of a "more livable working environment," and the implementation of the type of air quality tests used in private industry.

The level one response advised that exhaust fans were being installed in the transmission, small engine, welding, engine, and machine shops. Additionally, the small engineshop was being equipped with exhaust hoses and fans which should alleviate the problem.

The level two response stated that the relief was granted in that six new exhaust fans had been installed, supplementing those already in existence. Further, the Air Pollution Control Commission had tested the shop and found the levels of carbon monoxide to be well within OSHA/NIOSH guidelines.

The level three decision generally recommended that both management and employees "avail themselves of the WVDOH Safety Division's expertise, recommendations, and regulatory procedures." More specifically, while the board of evaluators found that a number of witnesses indicated some medical difficulties, no conclusive proof was admitted that would directly connect those claims with pollutants encountered in the work environment. It was subsequently concluded that the Grievant had failed to prove a violation of any policy that resulted in the endangerment of the

health or safety of any employee.

Grievant advanced this matter to level four on December 28, 1992; it was subsequently held in abeyance pending ongoing efforts to attain a settlement. When negotiations proved unsuccessful, a level four hearing was conducted on November 29, 1994. The matter became mature for decision with the submission of proposed findings of fact and conclusions of law by both parties on or before January 27, 1995.

Grievant's assigned work station, the Equipment Divisionin Buckhannon, is housed in a single story, masonry and glass structure enclosing 70,000 square feet. DOH has utilized this building since the 1950's. Several "shop" areas function in the building but a significant portion of the floor space is open. Due to the nature of the work performed, the repair of gasoline and diesel engines, painting and cleaning metal parts, fumes and air-borne particulants are generated.

On January 23, 1992, Grievant became ill after work and received medical care at the emergency room of the local hospital. Grievant opines that his illness was due to inhalation of toxic fumes during the work day; however, no medical determination was ever made to substantiate this claim. On February 5, 1992, Grievant again became ill, he claims, from inhalation of exhaust fumes from a gasoline operated generating plant in the small engine room. This grievance was filed the following day.

Thirteen of Grievant's co-workers testified at the level three hearing, held on October 22, 1992, regarding their own health problems. Several individuals indicated that they suffered from high blood pressure, headaches, sinus conditions, and heartburn. Two employees reported cardiac conditions and two other employees complained of seizures. One employee stated that he suffers from bronchitis.

In March 1993, a representative of NIOSH conducted a site visit to the Buckhannon facility. A follow-up report dated October 26, 1993, concluded that a review of monitoringconducted by the West Virginia Division of Environmental Protection indicated that "workers are unlikely to be exposed to CO concentrations in excess of evaluation criteria." Several deficiencies were identified and recommendations for corrections made. Those recommendations are summarized as follows:

1. Provide written standard operating procedures and follow manufacturer's directions for use of the exhaust ventilation system when making repairs inside the facility to minimize the introduction of CO gas and diesel exhaust into the work area.

2. Because over-sized vehicles are serviced, the paint spray booth should be enlarged or the vehicles should be painted in stages with the spraying confined to that portion of the booth where the ventilation system effectively captures the paint spray and vapors.

3. Sources of ignition (open flame or spark-producing equipment) should be removed from within twenty feet of the open doors of the paint spray booth.

4. Written standard operating procedures should be produced for use of respiratory equipment by painters.

5. All flammable and combustible liquids should be stored and handled appropriately, i.e., stored in tanks or closed containers.

On May 26, 1993, Terri Frame, an Industrial Hygienist from the West Virginia Division of Labor, visited the site andcollected air samples from throughout the building. Testing was conducted for carbon monoxide, benzene, toluene, and carbon dioxide. In a report dated August 27, 1993, Ms. Frame concluded "[n]o detectable amounts were noted on any of the tests." However, she continued, the results were not surprising because not one piece of machinery was operating during her visit. She further recommended testing be performed on a busy winter day to establish a worst case scenario and to determine whether the engineering controls are effective.

DOH was cited for four conditions which did need correction. Two of these conditions involved matters related to this complaint. As a result, it was recommended that DOH develop a comprehensive written respiratory protection program and that respirators be stored in a convenient, clean, and sanitary location.

At level four, Grievant primarily focused his complaint upon welding fumes. He explained that the building houses two welding shops, one fully open and the other only partly enclosed by an archway. Grievant asserts that the welding process creates smoke and fumes which the present exhaust/ventilation system cannot adequately remove. Grievant cites engine exhaust and solvent fumes as the causes of his personal health problems.

Grievant described his health problems at the level three hearing to consist of colds, sinus problems, and inflamedbronchial tubes. In August 1989 an x-ray revealed "debris" in his lungs; however, "[t]here wasn't a great lot of it and [the doctor] suspected that probably more of it was infection and inflammation than actual debris." (L.III T. p.75) Grievant claims to have had chest pains for years, breathing difficulty, frequent nosebleeds, and heart arrhythmia. Grievant states that he has

also been diagnosed as having Raynaud's disease which he claims may be caused by chlorinated solvents, vibrating tools or even driving a vehicle. The disease manifests itself in the form of weakened muscle tissue.

Grievant asserts that he is exposed to no fumes, exhaust, or solvents at home, and he does not engage in any activities which might be the cause of these health problems. He concludes the source of his condition is the work environment and requests that DOH be required to comply with the OSHA recommendation and consult a ventilation engineer regarding the removal of welding emissions from the shop, provide Standard Operating Procedures for the use of ventilation and respiratory equipment, and enforce the use of exhaust hoses and covers for solvent tanks.

DOH responds that the NIOSH recommendations have been implemented and that air testing indicates the air quality to be within industry standards for carbon monoxide. DOH asserts that the health problems experienced by Grievant are substantially different from those of any other employeeworking in the same environment, indicating that he may have an unusual susceptibility to a chemical solvent. Absent a showing of any violation of OSHA standards, DOH argues that Grievant has failed to prove the work environment has detrimentally affected his health.

Discussion

It may be readily accepted that the work completed in the Equipment Division building is a type which generates dust, fumes, and debris. It is also accepted that Grievant appears to be predisposed to numerous physical maladies. It may not be concluded that the work environment is the primary cause of Grievant's health problems. This conclusion is based upon several factors.

First, Grievant offers no medical reports to substantiate his claim. By his own admission, the physician's diagnosis on January 23, 1992, was based on an inquiry as to his activities that day because the hospital lacked the equipment to measure less than fatal quantities of carbon monoxide in his blood. Grievant does not indicate that he sought medical assistance on February 5, 1992, and offers only his self-diagnosis that he became ill due to exhaust solvent fumes. Interestingly, Grievant did not even describe the symptoms of either episode. Grievant testified at levels three and four that he has undergone many physical examinations and tests over the years, yet no medical evidence was offered to indicate that any of his complaints were work related.

Second, the record indicates that respirators are available at the work site. Presumably dust masks and perhaps other safety equipment are also at the employees' disposal. Grievant does not

indicate that he made use of this equipment or that he made any other efforts to minimize his exposure to what he believed to be harmful conditions.

Third, other employees who were parties to this or related grievances have withdrawn their claims after additional exhaust and ventilation equipment was installed as a result of the level three decision. This would indicate that the other employees no longer find the environment unacceptable and/or the other employees do not believe the environment is the cause of their health problems.

In any event, it does not appear that Grievant is now entitled to any relief because he has not worked since injuring his arm on May 13, 1992. The exact nature of Grievant's employment status is unknown, although he indicated that he has been found totally permanently disabled by the Veteran's Administration. Grievant asserts that he may return to work in the future, possibly in another capacity; however, at this time, he is not affected by the current conditions of the Equipment Division building and he would enjoy no benefit from implementation of the requested relief.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant has been employed by the West Virginia Division of Highways since December 1986.

2. In January and February 1992, Grievant allegedly suffered from the inhalation of fumes and exhaust in the Equipment Division building in Buckhannon.

3. Testing at the site indicated air quality to be within industry standards.

4. DOH has installed additional ventilation fans subsequent to the filing of this and related grievances.

5. Grievant has been unable to work since May 1992, and cannot state with certainty that he will ever return to the position which he held prior to that time.

CONCLUSIONS OF LAW

1. It is incumbent upon the Grievant to prove the elements of the grievance by a preponderance of the evidence. Salmons v. W.Va. Dept. of Transportation/Div. of Highways, Docket No. 94-DOH-555

(Mar. 20, 1995).

2. Grievant has failed to prove that the air quality in the Equipment Division building in Buckhannon is below industry standards or that two alleged illnesses were in fact caused by the inhalation of toxic fumes or otherwise arose from the work environment.

Accordingly, the grievance is DENIED.

DATED APRIL 28, 1995 SUE KELLER, SENIOR ADMN. LAW JUDGE