
OPINION OF TRUSTEES

In Re

Complainant: Employees and Pensioners
Respondent: Employers
ROD Case No: 88-658 - February 6, 1995

Trustees: Thomas F. Connors, Michael H. Holland, Marty D. Hudson and
Robert T. Wallace.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health benefits coverage under the terms of the Employer Benefit Plan.

Background Facts

The Complainants are Employees, Pensioners, and laid-off Employees of the Respondents. The Respondents consist of four active coal companies and one company that is no longer engaged in coal mining activities and, consequently, no longer employs miners. The Complainants contend that the Respondents have failed to provide health benefits coverage at the level prescribed by the terms of the Employer Benefit Plan established pursuant to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1988.

Information provided to the Funds by the Complainants indicates that the Respondents have provided health benefits coverage for the Complainants by implementing health insurance policies under which benefits are paid at 80% of the cost of a service with the beneficiaries paying 20% of the cost. The Employers have promised to reimburse beneficiaries for the 20% they are required to pay under the terms of the plans. Benefit plan descriptions were not included with the case, so it is not clear whether deductibles and other benefits may also be involved.

Two active coal companies have responded that they are providing all benefits required by their collective bargaining agreements through a combination of policies through insurance carriers and direct payment of all other benefits covered under the Employer Benefit Plan by the coal companies themselves. One company has noted that one of the Employees listed as a Complainant is no longer employed by that company.

The company that is no longer engaged in coal mining activities states that it has been seeking health insurance coverage for its eligible retirees, disability pensioners, and laid-off Employees, but has been unable to find a carrier willing to provide the coverage. The company, along with one of the other companies, contends that it would be impossible to fully insure health benefits

as required by the Employer Benefit Plan. The company further states that six of the Complainants listed in the case have been employed by other coal operators subsequent to having been laid off by the Respondent and that another of the Complainants was laid off more than four years ago.

On November 10, 1992, a United States District Court issued an extension of a temporary restraining order (TRO) enjoining the Respondents from failing to provide the Complainants with health insurance coverage as required by the terms of their collective bargaining agreements. Under the TRO, the Court accepted the provision of 80/20 health plans by the Employers as long as they pay any additional medical expenses covered under the Employer Benefit Plan. The temporary restraining order further states that all parties reserve their respective positions regarding whether the provision of benefits through 80/20 policies is permissible according to the collective bargaining agreements between the Employers and the United Mine Workers of America. The order was to remain in effect until the expiration of the Wage Agreement or until the further order of the court.

One company contends the temporary restraining order rendered by the court has stayed this resolution of dispute and asks that the resolution of dispute be dismissed or referred back to the parties to be resolved by negotiations.

Two of the companies have not responded to requests for statements of their positions in this dispute.

Dispute

Are the Respondents' implementations of their 80/20 health coverage plans in violation of the 1988 Wage Agreement?

Positions of the Parties

Position of the Complainants: The Respondents are in violation of the 1988 Wage Agreement by their use of 80/20 health coverage plans.

Position of the Respondents: Employers that responded contend that they are providing the level of coverage required under the 1988 Wage Agreement by a combination of the use of insurance carriers and direct payment of benefits by the companies. In addition, one company maintains that the temporary restraining order has stayed this dispute, which should be dismissed or referred back to the parties for resolution by negotiation. Two companies have not responded.

Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1988 provides in pertinent part:

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for Its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans.... The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

Article I (1), (2), and (4) of the Employer Benefit Plan provide:

Article I - Definitions

The following terms shall have the meaning herein set forth:

- (1) "Employer" means (Employer's Name).
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1988, as amended from time to time and any successor agreement.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

Article II A. (4) of the Employer Benefit Plan provides:

Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

A. Active Employees

- (4) A new Employee will be eligible for health benefits from the first day worked with the Employer.

Article III A. (8) and (9) of the Employer Benefit Plan provide in pertinent part:

Article III - Benefits

A. Health Benefits

- (8) Co-Payments

Certain benefits provided in this Plan shall be subject to the co-payments set forth below and such co-payments shall be the responsibility of the Beneficiary....

Co-Payments for covered Health Benefits are established as follows:

Benefit	Co-Payment
<p>(a) Physician services as an out-set forth in section up to a maximum of \$150 per 12-A(2) and physician visits in connection with the benefits set forth in section A(3), paragraph (c) but only for pre and post-natal visits if the physician charges separately for such visits in addition to the charge for delivery, and paragraphs (g) through (m), paragraph (n) except inpatient surgery, paragraph (o) and section A(7) paragraph (f).</p>	<p>Working Group -- \$7.50 per visit patient as month period(*) per family. Non-working Group -- \$5 per visit up to a maximum of \$100 per 12-month period(*) per family.</p>
<p>(b) Prescription drugs and insulin, \$5 per prescription or refill up as set forth in section A(4) and take-home drugs following hospital confinement as set forth in section A(1)(a).</p>	<p>to \$50 maximum per 12-month period(*) per family. Note: For purposes of this co payment provision, a prescription or refill shall be deemed to be each 30 days (or fraction thereof) supply.</p>

* The 12-month periods shall begin on the following dates: March 27, 1988; March 27, 1989; March 27, 1990; March 27, 1991 and March 27, 1992.

(9) Vision Care Program

<u>(a) Benefits</u>	<u>Actual Charge Up To Maximum Amount</u>	<u>Frequency Limits</u>
Vision Examination	\$20	Once every 24 months
Per Lens (Maximum = 2)		Once every 24 months
- Single Vision	10	
- Bifocal	15	

- Trifocal	20	
- Lenticular	25	
- Contact	15	
Frames	14	Once every 24 months

Article III D. (1)(a) of the Employer Benefit Plan provides:

D. General Provisions

(1) Continuation of Coverage

(a) Layoff

If an Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment insurance coverage is as follows:

<u>Number of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to the Employee's Date Last Worked</u>	<u>Period of Coverage Continuation from the Date Last Worked</u>
2,000 or more hours	Balance of month plus 12 months
500 or more but less than 2,000 hours	Balance of month plus 6 months
Less than 500 hours	30 days

Discussion

Article XX Section (c)(3)(i) of the 1988 Wage Agreement requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for its Employees. The Wage Agreement stipulates that benefits provided by the Employer pursuant to such Plan shall be guaranteed during the term of the Agreement by that Employer at levels set forth in such Plan.

Article II. A. of the Employer Benefit Plan provides health benefits coverage for active Employees working in classified positions for a signatory Employer. Article III. D. (1)(a) provides continued benefits coverage for laid-off Employees based on the number of hours worked for the Employer during the 24-month period prior to the date last worked.

The Respondents provide coverage for the Complainants under 80/20 plans implemented through insurance carriers. Article III. A. of the Employer Benefit Plan specifies the benefits which are to be provided under the Plan. Article III. A. (8) provides that certain benefits under the Plan shall be subject to co-payments of \$5.00 or \$7.50, and such co-payments shall be the responsibility of the beneficiary. The usual procedure for filing claims as contemplated under the terms of the Wage Agreement is one in which the beneficiary is expected to authorize the provider to bill the insurance carrier for services rendered and to pay only the co-payment charge set forth in Article III. A. (8), until the specified maximum yearly amount is reached. The procedure for filing claims and the method of payment established by the Respondents in this case are inconsistent with the claim procedure contemplated under the terms of the Wage Agreement and the Employer Benefit Plan. Levels of benefits to be provided to Employees, Pensioners, dependents, survivors and eligible laid-off Employees are established through collective bargaining and may not be unilaterally changed by an Employer. In addition, in ROD 88-235 (copy enclosed herein) and several others, the Trustees have previously addressed the issue of whether an Employer can partially implement its plan through an insurance carrier and offer to pay or reimburse its Employees for out-of-pocket expenses in excess of applicable co-payment amounts. In that opinion, the Trustees concluded that such practice is inconsistent with the express provisions of the Wage Agreement and the Employer Benefit Plan. Accordingly, the Respondents' use of non-conforming health coverage plans and its offer to pay certain out-of-pocket expenses are inconsistent with the express provisions of the Wage Agreement and the Employer Benefit Plan. The Respondents are required to provide health benefits coverage for the Complainants and their eligible dependents at the level specified in the Employer Benefit Plan.

One Respondent contends that this case has been stayed by the restraining order issued by the court. The Trustees are not parties to that case. Thus, the order restraining the Employers from failing to provide health insurance coverage for the Employees and Pensioners has no effect on whether the Trustees may decide this Resolution of Dispute.

Opinion of the Trustees

The Respondents' health coverage plans are inconsistent with the express provisions of the 1988 Wage Agreement and the Employer Benefit Plan. The Respondents are required to provide health benefits coverage for eligible Complainants and dependents at the level specified in the Employer Benefit Plan.