
OPINION OF TRUSTEES

In Re

Complainant: Complainant
Respondent: Respondent
ROD Case No: 02-007- October 13, 2004

Trustees: A. Frank Dunham, Michael H. Holland, Marty D. Hudson and
Elliot A. Segal.

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

Background Facts

The Complainant last worked for a signatory employer on June 26, 1993. He was awarded a deferred vested pension under the 1974 Pension Plan effective January 1, 1996, based on 18 years of credited service. According to Article I (5) of the Employer Benefit Plan, any person who is receiving a deferred vested pension based on less than 20 years of credited service is not eligible for health benefits coverage.

Between October 1998 and January 2001, the Complainant was employed by a non-signatory employer. Under the terms of the 1974 Pension Plan, pension benefits are suspended when a pensioner is employed in the coal industry. Therefore, the Complainant's pension was suspended but resumed in February 2001. In September 2001, the Complainant accepted employment with the Respondent and worked in a classified position until April 2003. Again, the Complainant's pension was suspended. Subsequently, the Complainant was notified by letter dated July 8, 2003, that his pension resumed effective May 2003. Based on his employment with the Respondent, the Complainant was awarded two additional years of classified signatory credit for a total of 20 years of credited service.

The Complainant states that the Respondent has refused to provide him with health benefits coverage as a Pensioner who is receiving a deferred vested pension based on 20 years of credited service.

Dispute

Is the Respondent required to provide benefits coverage for the Complainant as a Pensioner?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide health benefits coverage for the Complainant as a Pensioner.

Position of the Respondent: The Respondent has not replied to repeated correspondence from Funds' staff requesting its position in this dispute.

Pertinent Provisions

Article XX(c)(3)(ii) of the 2002 National Bituminous Coal Wage Agreement (Wage Agreement) provides the following:

(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 and who are not eligible to receive benefits from a plan maintained pursuant to the Coal Act. The benefits provided by the Employer to its eligible Participants pursuant to such plan shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plan. 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 (2), (4) and (5) of the 2002 Employer Benefit Plan provides:

ARTICLE I DEFINITIONS

The following terms shall have the meanings herein set forth:

- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 2002, 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.
- (5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service, or (ii) a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any

corresponding paragraph of any successor thereto, under the 1974 Pension Plan (or any successor thereto), whose last classified signatory employment was with the Employer, subject to the provisions of Article II B of this Plan. "Pensioner" shall not mean any individual entitled to benefits under section 9711 of the Internal Revenue Code of 1986, as amended by the Coal Industry Retiree Health Benefit Act of 1992.

Article II B. of the Employer Benefit Plan provides the following:

Article II - Eligibility

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

B. Pensioners

Health benefits under Article III hereof shall be provided to Pensioners as follows:

- (1) Any Pensioner who is not again employed in classified signatory employment subsequent to
 - (a) such Pensioner's initial date of retirement under the 1974 Pension Plan, and
 - (b) December 31, 2001, shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan. Notwithstanding (i) and (ii) of the definition of Pensioner in Article I (5) of this Plan, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan.

Discussion

The Complainant first retired from classified employment with a signatory employer in June 1993. He was awarded a deferred vested pension under the 1974 Pension Plan based on 18 years of credited service. According to Article I.(5) of the Employer Benefit Plan, a "Pensioner shall mean any person who is receiving a pension other than (i) a deferred vested pension based on less than 20 years of credited service . . ." Therefore, when the Complainant originally retired, he was not considered a "Pensioner" under the terms of Article I.(5) of the Employer Benefit Plan and was not eligible for health benefits.

Following his initial retirement, the Complainant was employed from October 1998 to January 2001 by a non-signatory employer. He was hired on September 30, 2001, by the Respondent. The Complainant ceased working for the Respondent on April 12, 2003, during the term of the 2002 Wage Agreement. Based on his employment with the Respondent, the Complainant was awarded two additional years of credited service, and upon retirement, he became a deferred vested Pensioner with 20 years of signatory service.

According to Article XX(c)(3)(i) of the 2002 Wage Agreement, each signatory Employer is required to provide health benefits to pensioners whose last signatory classified employment was with such Employer. Article I.(5) of the Employer Benefit Plan defines a "Pensioner" as, in part, an individual who is receiving a deferred vested pension that is based on 20 years or more of signatory service. The Complainant was not a "Pensioner" when he initially retired in 1993, but he became a "Pensioner" when he retired in 2003. As a result, his last signatory employer at the time he became a Pensioner is responsible for his health benefits.

The Complainant meets the eligibility criteria of Article II of the Respondent's Employer Benefit Plan. Under Article II.B(1), health benefits coverage is provided to Pensioners who are not again employed after their initial retirement date and December 31, 2001. The Complainant initially retired from a classified position with a signatory employer on June 26, 1993, and was awarded a pension under the 1974 Pension Plan. The Complainant was "again employed" by a signatory employer, the Respondent, in September 2001, which was subsequent to his original retirement date but not subsequent to December 31, 2001. Therefore, following his retirement from the Respondent on April 3, 2003, the Complainant became a Pensioner who was "not again employed . . . subsequent . . . to December 31, 2001," and is thus eligible for health benefits from the Respondent under this provision.

This result is supported by ROD 81-452. This ROD determined the eligibility of a Pensioner who retired on February 1, 1979, returned to work with a different employer on July 1, 1980, and retired again on August 7, 1981. The Trustees found the Pensioner eligible for health benefits coverage from his last employer under Article II.B(1) because although he had retired and then returned to work on July 1, 1980, at the time of his second retirement, he was a Pensioner who was "not again employed . . . subsequent . . . to June 7, 1981" (the termination date of the 1981 Employer Benefit Plan).

Opinion of the Trustees

The Respondent is required to provide health benefits coverage for the Complainant as a Pensioner effective May 1, 2003, consistent with the terms of the Wage Agreement and Article II.B of the Employer Benefit Plan.

