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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 07-0043 - January 5, 2011

Trustees: Micheal W. Buckner, Daniel L. Fassio, Morris D. Feibusch, and Michael H. Holland.

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

On February 6, 2009, the Complainant was awarded a 30-and-Out Pension from the UMWA 1974 Pension Plan, and was advised to contact his last Employer regarding health benefits when he attained age 55. The Respondent employed the Complainant, but was not the last Employer to report hours for him. The Respondent sold several mines in 2003, including the mine at which the Respondent was employed. The purchaser continued to employ the Respondent until January 13, 2009.

As part of the sale, the Respondent signed a Memorandum of Understanding (MOU) with the UMWA whereby the Respondent retained the obligation to provide health benefits to certain employees, generally those already pension-eligible. The list of those employees was contained in the MOU and included the Complainant. The MOU specifically removed the obligation to provide health benefits to the employees covered under the MOU from the purchaser of the mines and placed the obligation on the seller, the Respondent. The purchaser is signatory to the 2007 Coal Wage Agreement, which eliminated the earnings limit associated with health benefits. The Respondent was last signatory to the 2002 Coal Wage Agreement, which contained a monthly earnings limitation of \$2,000 per month, above which a Pensioner would have his health benefits suspended until his monthly earnings dropped below that amount.

On October 24, 2009, upon reaching age 55, the Complainant applied to the Respondent for health benefits. The Respondent acknowledged its responsibility to provide health benefits to the Complainant, but denied his application based on earnings that exceeded \$2,000 per month.

The Complainant believes that the earnings limitation is not applicable because his last credited service was with an employer that was signatory to the 2007 Coal Wage Agreement. The Respondent believes it should be considered the Complainant's last Employer, but that the earnings limitation of \$2,000 remains in effect for its retirees because it was last signatory to the 2002 Coal Wage Agreement.

### Dispute

May the Respondent apply the \$2,000 monthly earnings limitation contained in the 2002 Coal Wage Agreement when determining the eligibility of the Complainant for health benefits?

### Positions of the Parties

Position of the Complainant: The Complainant last worked for an Employer signatory to the 2007 Coal Wage Agreement, which eliminated the monthly earnings limitation associated with the provision of health benefits. The Complainant is eligible for health benefits regardless of monthly earnings.

Position of the Respondent: The MOU Respondent signed with the UMWA in effect makes the Respondent the Complainant's last Employer. The terms of the last Coal Wage Agreement signed by the Respondent are the terms that should be applied regarding the provision of health benefits to the Complainant.

### Pertinent Provisions

Article XX (10)(c) of the 2002 National Bituminous Coal Wage Agreement provides:

#### Article XX – HEALTH AND RETIREMENT BENEFITS

##### (10) HEALTH CARE:

Health care benefits provided under the Employer Benefit Plan are guaranteed during the terms of this Agreement subject to the terms of this Agreement at the level of benefits provided in the Employer Benefit Plan.

(c) Pensioners receiving a Special Permanent Layoff Pension or a Special 30-and-Out Layoff Pension will be provided health benefits from their Employers in accordance with the layoff benefits otherwise provided under this Wage Agreement; subsequently, upon reaching age 55, such pensioners shall receive health benefits from their Employers. Pensioners receiving a 30-and-Out Pension will, upon reaching age 55, receive health benefits from their Employers.

Article I (1), (2) and (5) of the 2002 Employer Benefit Plan provide:

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (Insert Employer's Name).
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 2002, as amended from time to time and any successor agreement.
- (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, (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; or (iii) a special permanent layoff pension, special 30-and-out layoff pension, or 30-and-Out pension under the terms of Article II. E.(4), II.E(5), or II.E.(6) of the 1974 Plan, during any period prior to the person's attainment of age 55. "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. (1) and (4) of the 2002 Employer Benefit Plans state in pertinent part:

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, 2002 (December 31, 2006), shall be eligible for coverage as a Pensioner under and subject to all other provisions of this Plan.
- (4) Health benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least \$1,800 per month effective January 1, 2002, and \$2,000 per month effective January 1, 2005.

Article II B. of the 2007 Employer Benefit Plans deleted subsection 4, the earnings limitation provision.

#### Discussion

The Complainant is receiving a 30-and-Out Pension from the UMWA 1974 Pension Plan and has attained age 55. The Plan provides health benefits to 30-and-Out Pensioners who reach age 55, generally provided by the Pensioners' last signatory Employer.

The Funds' Office of General Counsel has reviewed the Memorandum of Understanding signed by the Respondent and the UMWA and has opined that the Respondent should be considered the Complainant's last signatory Employer for purposes of this ROD. The Trustees previously determined in ROD 07-0007 that the provisions of the last Coal Wage Agreement signed by an Employer are the provisions determining whether or not the earnings limitation is in effect. Because the Respondent was last signatory to the 2002 Coal Wage Agreement, the terms of that agreement are in effect when determining the eligibility of the Complainant for health benefits.

#### Opinion of the Trustees

The earnings limitation of \$2,000 remains in effect as long as the Respondent's 2002 Employer Benefit Plan continues.