
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer XYZ
ROD Case No: 22 - June 27, 1979

Board of Trustees: Julius Mullins, Chairman; John J. O'Connell, Trustee; Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 1950 Benefit plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute about an Employee's eligibility for health benefits from an Employer and hereby render their opinion on the matter.

Background Facts

Complainant was an Employee of Employer ABC, Inc., as of December 5, 1977. As of the date, ABC, Inc., had filed for bankruptcy but was being operated by a court appointed representative. Employer XYZ took over several of the strip mining facilities of ABC, Inc. XYZ signed the National Bituminous Coal Wage Agreement of 1978 on April 3, 1978 and elected to provide health and other non-pension benefit coverage to its Employees as of June 1, 1978. All of Employer XYZ's classified employee's were former employees of Employer ABC, Inc., who were hired by XYZ as they were needed and in order of their seniority with ABC, Inc., Employer XYZ purchased several coal leases from ABC, Inc. and operated the same strip pits that Employer ABC, Inc., had operated previously. The operations of ABC, Inc. were not suspended for a period longer than 6 months. In addition, Employer XYZ assumed payments on much of the equipment owned by the previous operator, ABC, Inc. and has used these assets of ABC, Inc. in operating the strip mines that XYZ took over.

As of June 22, 1978, Employer ABC, Inc. was still in bankruptcy and had not yet been dissolved.

Employee's dependent was hospitalized on June 22, 1978 and incurred medical expenses which Employer XYZ's Insurance Carrier refused to pay.

Employee was called back to work on July 28, 1978.

Question or Dispute

Is Employer XYZ a "successor" to Employer ABC, Inc. for purposes of health and other non-pension benefit obligations of the National Bituminous Coal Wage Agreement of 1978, Article XX, Section (C)(3)(i)?

If so, is Employer XYZ required to provide health benefits coverage for the Employee and his eligible dependents for the period June 1, 1978 to July 28, 1978?

Positions of the Parties

Employee's Position: Employer XYZ is obligated to provide health benefit coverage to Employee and his dependents for the period June 1, 1978 to July 28, 1978. Since XYZ was a successor to predecessor Employer ABC, Inc., XYZ assumed Employer ABC, Inc.'s obligation to provide health benefits to Employee while he was on lay off pursuant to Article XX of the NBCWA of 1978 and Section 3, Article II A(2) of the Employer Benefit Plan.

Employer's Position: Employer XYZ is not obligated to provide health benefit coverage to Employee and his dependents for the period June 1, 1978 to July 28, 1978. Since he was a new employee, he was eligible for health benefits from the first day worked the Employer, July 28, 1978, pursuant to Section 3, Article II A(4) of the Employer Plan. Consequently, he was not eligible for benefits from Employer XYZ for any periods prior to that date of July 28, 1978.

Pertinent Provisions of the Employer plan

Section 3, Article II, A of the Employer plan provides as follows:

Benefits under Article III shall be provided to any employee who:

- (2) is on layoff or disabled from the Employer and had continuing eligibility as of March 27, 1978, for coverage under the United Mine Workers of America 1974 Benefit Plan ("prior Plan") as a lid-off or disabled employee. Coverage for such laid-off or disabled Employees shall not continue beyond the date when they would no longer have been eligible for such coverage under the provisions of the prior Plan.
- (3) Except as provided in paragraph (2) above, any Employee of the Employer who is not actively at work* for the Employer on March 27, 1978, will not be eligible for coverage under the Plan until he returns to active employment with the Employer.

Any Employee of the Employer who as of December 5, 1977, was eligible for benefits under the prior Plan who is not schedule to work within two weeks after March 27, 1978, because of lack of work, such an Employee will, for purposes of this Plan, be considered eligible for coverage under the plan as March 27, 1878, but as an Employee on layoff as of such date.

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

* Actively at work includes an Employee of the Employer who was actively at work on December 5, 1977, and who returns to active work with Employer within two weeks after March 27, 1978.

Trustee's Eligibility Question and Answer H-6, Part I, provides:

Part I

Question: What is a "successor" company, signatory to the 1978 Wage Agreement, for purposes of health and death benefit obligations of the 1974 Plan and Trust?

Answer: 1. A company, itself signatory to the 1978 Wage Agreement, will be considered a "successor" if it expressly assumes health and death benefit obligations of retired persons last employed by the predecessor company by, for example, payment of health care bills or death benefits or execution of a contract with a health carrier providing coverage for such persons; or, if the signatory company implicitly assumes these obligations by, for example, oral promises of coverage or by other acts of similar implication.

2. Where no explicit or implicit assumption of obligations has occurred, a company signatory to the 1978 Wage Agreement will be considered a "successor" if:

- (a) the new company has signed the 1978 Wage Agreement; and
- (b) a majority of the employees presently working for the new employer formerly worked for the old employer; and
- (c) the location is the same geographical area and the work functions have been continued relatively unchanged; and
- (d) operations are not suspended for longer than six months (not counting a strike period); and
- (e) either 1. there has been a transfer of a substantial proportion of the assets of the old company employer (seller) to the new company (purchaser),
or 2. the new company is owned and operated by substantially the same people who owned and operated the seller company.

Discussion

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Clearly, the Employee was eligible for health benefits under the terms of Section 3, Article II A(2) of the Employer Plan, set forth above, for the period June 1, 1978, while on layoff.

Under the criteria of Trustees' Question and Answer H-16, Part 1, 2, Employer XYZ is a successor to Employer ABC, Inc., the company which employed the Employee prior to his recall on July 28, 1978.

Consequently, Employer XYZ assumed the obligations that Employer ABC, Inc. otherwise would have had under Article XX of the NBCWA of 1978 to provide benefits to the eligible Employee for the period between layoff and recall.

Opinion of the Trustees

The Trustees are of the opinion that Employer XYZ, as the successor to Employer ABC, Inc., is required to provide health benefit coverage to the Employee and his eligible dependents for the period June 1, 1978 to July 28, 1978, while the Employee was on layoff.