

OPINION OF TRUSTEES

In Re

Complainant: Surviving Spouse
Respondent: Employer
ROD Case No. 50 - August 27, 1979

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

Pursuant to Article IX of 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 concerning a surviving spouse's eligibility for continuation of Death Benefit payments from an Employer and hereby render their opinion on the matter.

Background Facts

The Employee, born January 31, 1950, worked for Employer "A" from 1970 to March 1976. He worked a total of 2290 hours from January 1975 to March 1976. He was employed by Employer "B", The Respondent, from March 1976 to December 9, 1976, and worked a total of 720 hours during this period; he received Sickness and Accident Benefits from November 1976 to May 1977.

The Employee died on August 12, 1977 and a death benefit of \$7,500, payable over a 60-month period, was authorized the surviving spouse under provisions of the 1974 Benefit Plan and Trust then in effect. On February 1, 1979, the Funds paid \$2,720 on this award representing an initial payment of \$2,000 and payments of \$90 a month covering the period from October 1977 through May 1978.

The Funds notified the surviving spouse that the Respondent was to assume responsibility of furnishing her with the remainder of the payments due from the total of \$7,500 Death Benefits and providing her with health benefits during the period she received the Death Benefit payments, as provided in the NBCWA of 1978. A copy of this letter was mailed to the Respondent.

Dispute

Is Respondent responsible for the continuation of death benefit payments amounting to \$4,780 over the remainder of the 60-month payment period?

Positions of Parties

Neither party cites any provision of the NBCWA or the Employer's Plan to support their positions. The surviving spouse and her representative both feel the Respondent Employer is responsible for payment of the unpaid balance due, as indicated in the Funds' February 1, 1979 letter.

The Respondent Employer merely states it is their understanding that death benefits would fall under the 1974 Contract and the Funds would be responsible for the full payment. The Respondent's insurance carrier is quoted by the surviving spouse's representative as stating they would assume no liability because no premiums were paid.

Applicable Regulations

- (1) Article XX, section (c)(3)(i) of the NBCWA, which provides in part ... "Such plans shall also include that each signatory continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection will be 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."
- (2) Article III D(1) of Employers Plan which provides as follows:

Deaths Prior to December 6, 1977

Death benefit payments shall be continued in those cases which were in pay status as of December 5, 1977, under the 1974 Benefit plan, for deceased Employees and Pensioners, whose last classified employment was with the Employer, in the same manner and in the same amounts, as previously provided for in the 1974 Benefit Plan.

Discussion

No question has been raised as to the facts. The deceased employee was last employed in a classified job by the Respondent Employer on December 9, 1976, at which time he became disabled. He had worked over 2,000 hours in classified signatory employment during the preceding 24-month period and was therefore eligible for continued health and death benefit coverage for a period of 12 months under regulations of the 1974 Benefit Plan and Trust then in effect. The Respondent Employer does not dispute the eligibility of the surviving spouse for the death benefit, since death occurred on August 12, 1977 within the period of continued eligibility, but asserts that the Funds is responsible for payment as death occurred before the 1978 Agreement became effective.

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The Trustees are of the opinion that pursuant to Article XX, Section (3) (i) of the NBCWA of 1978 and Article III D(1) of the Employer benefit plan, The Respondent Employer "B" is responsible for the continuation of death benefit payments to the surviving spouse of the Employee in the amount of \$90 a month for the period beginning June 1, 1978 and continuing through August, 1982, with final payment in the amount of \$190 for the month of September, 1982.