
OPINION OF TRUSTEES

In Re

Complainant: Employer
Respondent: Pensioner
ROD Case No: 70 - January 16, 1980

Board of Trustees: Harrison Combs, 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 concerning the provision of health and other non-pension benefits to a Pensioner by his last Employer and hereby render their opinion on the matter.

Background Facts

The UMWA Health and Retirement Funds approved a 1974 Plan Deferred Vested pension based on more than 20 years of credited service for the Respondent Pensioner on August 10, 1979. On the pension application, it was indicated that the Pensioner had last worked in a classified job for the Complainant Employer in August 1976. At that time, according to the Complainant, the Respondent was discharged for misconduct under the terms of the NBCWA of 1974. Upon approval of the pension, both parties were notified by the Funds that the Complainant Employer was responsible for providing health and other non-pension benefit coverage under Complainant's benefit plan established pursuant to Article XX(c)(3) of the NBCWA of 1978,

After receiving the Funds' notice concerning their responsibility for providing benefit coverage, the Complainant filed a request for Trustee opinion, stating that they had assisted in finding similar employment for the Respondent with another signatory Employer. The Respondent stated that he had been employed in a classified job by the Complainant Employer from March 1968 to May 1976 and that he had completed only one day of orientation training with the other Employer for which he was paid \$54.54, less deductions of \$3.71 for taxes and \$43.00 for "Misc." (apparently an X-Ray). However, even though he had passed the physical examination for employment, his physician, who had performed cancer surgery earlier, advised him not to accept the job because of the heavy lifting involved.

Dispute

Is the Complainant Employer responsible for providing health and other non-pension benefits to the Respondent Pensioner? If not, is the other Employer responsible?

Positions of the Parties

Complainant Employer's Position: In discharging the Pensioner for misconduct in May 1976, the Employer states that all financial and legal responsibilities were severed under the NBCWA of 1974; additionally, the Complainant Employer participated in finding employment for the Respondent with the other Employer.

Respondent Pensioner's Position: The Pensioner states that he only attended an orientation class and did not perform any work for the second Employer.

Pertinent Provisions

- (1) Article XX, Section (c)(3)(i) of the NBCWA of 1978, which provides that each signatory Employer shall establish a benefit plan to provide health and other non-pension benefits for...pensioners under the 1974 Pension Plan whose last classified employment was with such Employer.
- (2) and (3) Articles 1(5) and II B of the Employer's Benefit Plan, which implement the above provision of the NBCWA.

Discussion

Article XX (c)(3)(i) of the NBCWA of 1978 provides that each signatory Employer shall establish an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by the Agreement as well as pensioners under the 1974 Pension Plan and Trust, whose last classified employment was with such Employer. In addition to health benefits for such 1974 Plan pensioners, the plan established by the signatory Employers must also provide life insurance coverage for the pensioners and health benefits for their dependents including lifetime health benefits for the surviving spouses of such pensioners, subject to certain limitations in the plans.

The cost of providing these benefits is substantial and it cannot be seriously contemplated that the burden was intended to fall on the second Employer in this case. In this instance, the Employee had previously worked a significant period for the Complainant Employer - from March 1968 to May 1976, at which time he was discharged. The Complainant Employer then undertook to assist the Employee in securing other employment and in January 1977, the Employee was accepted for employment by the second Employer. After receiving one day of orientation training, the Employee voluntarily terminated, prior to assuming the duties of the job he was to fill, on the basis that he was physically unable to perform the work because of cancer

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surgery. Under these circumstances, the Employee's retirement from classified employment occurred in May 1976 at which time he last worked for the Complainant Employer.

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The Trustees are of the opinion that the Complainant Employer is responsible for providing health benefits and life insurance coverage for the Respondent Pensioner under the provision of the Employer's benefit plan.