
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No. 153, September 29, 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 service pension based on more than 20 years of credited service for the Pensioner, effective January 1, 1979. Upon approval of the pension, the Pensioner and Employer A were notified by the Funds that Employer A was responsible for providing health and other non-pension benefit coverage under the benefit plan established pursuant to Article XX (c) (3) of the NBCWA of 1978.

In October 1979, the Pensioner contacted the Respondent Employer regarding the possibility of employment. The Pensioner states that he was hired by the Respondent Employer on October 28, 1979 and worked until November 8, 1979 at which time he states he was laid off. The Respondent Employer, however, states that the Pensioner agreed to be tested on the operation of the machines before actually being employed as a classified employee. After a week and a half of testing, the Respondent Employer states that the Pensioner's performance was determined to be unsatisfactory and the Pensioner was informed on November 8, 1979 that he would not be hired.

The Pensioner's retirement pension was reinstated by the Funds effective December 1, 1979. No additional pension credit was awarded to the Pensioner since he had not worked a sufficient number of hours to qualify. The Respondent Employer has refused to provide health and other non-pension benefits to the Pensioner.

Dispute

Is the Respondent Employer responsible for providing health and other non-Pension benefits to the Pensioner?

Position of Parties

Complainant Pensioner's Position: The Pensioner states that the Respondent Employer hired him without mentioning a testing period. In fact, he had been told by the superintendent that he was the first person to be hired without a try-out period. He states he worked nine shifts and was told he was being laid off for a period of three to five days and would be called as to when he could begin work again. After some time had passed without recall, the Pensioner reapplied for his pension and, in February 1980, requested health coverage under the Respondent Employer's Benefit Plan. His benefit coverage was refused.

Respondent Employer's Position: The Pensioner applied for potential employment with the Respondent Employer. Due to the Pensioner's age, the superintendent and Pensioner agreed to a testing period during which it would be determined if he could operate the equipment satisfactorily before being actually employed as a classified employee. After a week and a half of testing on three different machines, the Pensioner's performance was unsatisfactory and he was told he would not be employed in such a capacity. After being thus informed, the Pensioner left and did not return.

Article XX (c) (3) of the NBCWA of 1978 states that the company from which a Pensioner retires is responsible for health benefit coverage. The Respondent Employer states that the Pensioner had retired from another company and, after several days of unsuccessful testing for a classified position, immediately went back on retirement. Therefore, inasmuch as he was never a classified employee, the Pensioner is not eligible for health benefit coverage under the Respondent Employer's plan.

Pertinent Regulations

- (1) Article XX, Section (c) (3) 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 I (5) and II B of the Employer's Benefit Plan, which implement the above provision of the NBCWA.
- (4) Q & A, H-3, which states that the last employer for whom a Pensioner works in a classified job, even for a brief period, is responsible for providing benefit coverage.
- (5) Article XVI, Section (b) and (f) of the NBCWA of 1978, which provides effective training programs for new employees who shall be paid at the lowest classified rate.

- (6) Article II A (4) of Employer's Plan, which provides that new Employees receive benefit coverage from first day worked.
- (7) Article I (5) of the Employer's Plan, which defines Pensioner as any person who is receiving a pension under the UMW 1974 Pension Plan whose last classified employment was with the Employer.

Discussion

The principal issue involves determination as to which Employer last employed the Pensioner in a classified job. It is clear that the Pensioner last worked in a classified job for Employer A in December 1978 at which time he retired and was awarded a service pension by the Funds. As such, the Pensioner was entitled to benefits under the Employer's Plan established pursuant to Article XX (c) (3) of the NBCWA of 1978. Accordingly, if it is determined that the Pensioner did not work as a classified employee for the Respondent Employer, Employer A will be responsible for providing benefit coverage.

With respect to the Respondent Employer's responsibility for providing benefit coverage, it must be determined whether participation in a trial employment program, prior to assignment to a regular job, constitutes classified employment. If so, it must be determined if the trial employment period causes the Respondent Employer to be responsible for providing health and other non-pension benefit coverage to an employee who later qualifies for a 1974 Plan pension which is based entirely on employment with other employers.

The NBCWA of 1978 does not provide for trial employment period for potential employees. In fact, the Respondent Employer submitted employment information for the purposes of determining pension credit which defines the Pensioner's "term of employment" from October 28, 1979 through November 8, 1979. Although this term was not sufficient to warrant additional pension credit, the Pensioner was thus recorded as an employee. Nor does the Employer's Plan specify any minimum period of employment in order for Employees or Pensioners to qualify for coverage. New employees are eligible from the first day worked, in accordance with Article II (A) (4) and Pensioners (with certain exceptions not applicable to this case) are eligible provided their "last classified employment was with the Employer" (Article II B and I (5)). This issue is addressed in Q & A H-3 which states that where a Pensioner has worked for Employer A for 20 years and later worked for Employer B for three months, Employer B is responsible for the Pensioner's benefit coverage. Although the Pensioner in this case only worked for the Respondent Employer for 60 1/2 hours, it must be concluded that the Pensioner was last employed by the Employer for whom he worked in November 1979.

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The Trustees are of the opinion that the Respondent Employer with whom the Pensioner was last employed in November 1979, is responsible for providing health and other non-pension benefits to the Pensioner.