

OPINION OF TRUSTEES

In Re

Complainant: Pensioners
Respondent: Employer A, Employer B, Employer C
ROD Case No: 325 and 326, October 28, 1982

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 ("UMWA") 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 coverage, for two UMWA 1974 Pension Plan ("1974 Pension Plan") Pensioners who were employed by Employer A at Mine H and one 1974 Pension Plan Pensioner who was employed by Employer A at Mine S, and hereby render their opinion on the matter.

Background Facts

The Pensioners' last classified employment was for Employer A, during the term of the National Bituminous Coal Wage Agreement ("NBCWA") of 1978. Employer A was signatory to the NBCWA of 1978, and owned two mines, Mine H and Mine S.

On January 18, 1980, Employer A sold Mine H to Employer B. This sale included a transfer of a substantial proportion of the Mine H assets of Employer A to Employer B. Mine H is located at the same location under Employer B as it was under Employer A. All operations continued without interruption under Employer B. And one hundred fifty nine (159) of Employer B's two hundred fifteen (215) Mine H Employees were formerly employed at Mine H by Employer A. Employer B became signatory to the NBCWA of 1978 with respect to Mine H, and later became signatory to the NBCWA of 1981.

On or about March 10, 1980, through a series of corporate transactions, Employer A sold Mine S to Employer C. This sale included a transfer of all the assets of Mine S to Employer C. Mine S is located at the same location under Employer C as it was under Employer A. All operations continued without interruption under Employer C. Two hundred ninety eight (298) of Employer C's four hundred one (401) Mine S Employees were formerly employed by Employer A at Mine S. Employer C became signatory to the NBCWA of 1978 with respect to Mine S, and later became signatory to the NBCWA of 1981. Since the transfer of these two mines, Employer A has not owned or operated any coal mines.

Under the sales agreement between Employers A and B, Employer A agreed to remain liable for its obligations arising from its ownership of Mine H that were not expressly assumed by Employer B. Employer B specifically disclaimed liability for any such obligations not expressly assumed by it. And, under the sales agreement, Employer B did not assume liability for benefits coverage for Pensioners whose last classified employment was with Employer A. On February 27, 1980, Employer A sent a letter to the UMWA Health and Retirement Funds ("Funds") advising the Funds that Mine H had been sold to Employer B and "[a]ll employees and beneficiaries of employees who are...[Employer A's]... responsibility regarding Health Benefits and Life Insurance coverage will be administered at...[Employer A's headquarters] Employer A attached a list of such employees to its February 27, 1980 letter. This list includes the Pensioners who are the Complainants in ROD Case No. 325, as well as several other 1974 Pension Plan Pensioners.

Under the sales agreement between Employer A and Employer C, Employer C specifically disclaimed liability for any obligations not expressly assumed by it, and Employer A agreed to indemnify Employer C for any claims made against Employer C for obligations not assumed by Employer C. And, under the sales agreement, Employer C did not assume liability for benefits coverage for Pensioners who last classified employment was with Employer A.

Consistent with the provisions of the above-described sales agreements, Employer A continued to provide benefits coverage to its Pensioners after it sold Mines H and S. By letter dated August 11, 1982, however, Employer A notified the Pensioners that their benefits coverage would be terminated effective September 1, 1982. On August 30, 1982, as a result of a meeting of representatives of the UMWA, the 1974 Benefit Trust, and Employers A and B, and C, Employer A agreed to extend the Pensioners' coverage through September 30, 1982. On September 29, 1982, the United States District Court for the Southern District of West Virginia ordered Employer A to provide coverage for the Pensioners through October 9, 1982. By agreement of the parties involved, Employer A extended coverage through October 18, 1982. On October 18, 1982 this coverage was again extended through October 29, 1982.

Dispute

Is Employer A, Employer B, Employer C, or the 1974 Benefit Trust responsible for the provision of health and other non-pension benefits coverage for the Pensioners and their eligible dependents?

Position of Parties

Position of Pensioners: The Pensioners and their eligible dependents should continue to receive health benefits the rest of their lives. This coverage should be provided by Employer A, Employer B and Employer C, or the 1974 Benefit Trust.

Position of Employer A: Based on Article XX, "General Description" part 10(d) of the NBCWA of 1978, the 1974 Benefit Trust is responsible for coverage of the Pensioners. Employer A was signatory to the NBCWA of 1978. Therefore, it was responsible for coverage only during the

term of that agreement. Because it was not signatory to the NBCWA of 1981, it has no obligation under it.

Position of Employer B: Employer B acquired Mine H in settlement of certain legal claims. The settlement agreement did not provide that Employer B was required to assume responsibility for benefits coverage for Employer A's Pensioners. Employer B never had any obligation to provide benefits to the Pensioners because they never worked for Employer B. Responsibility for such benefits coverage lies with either Employer A or the 1974 Benefit Trust.

Position of Employer C: Under the sales agreement between Employer A and Employer C, Employer C did not assume responsibility for benefits coverage for Employer A's Pensioners. Therefore, responsibility for such benefits coverage lies with Employer A or the 1974 Benefit Trust.

Pertinent Provisions

Article XX, Section (c)(3)(i) of the NBCWA of 1978 provides in pertinent part:

(3)(i) Except as provided in (ii) below, effective on June 1, 1978, 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 this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last classified employment was with such Employer. The benefits provided pursuant to such plans shall be guaranteed during the term of this Agreement by each Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer 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....

Article 1(1) of the Employer's Benefit Plan provides:

- (1) "Employer" means [company name].

Article 1(5) of the Employer's Benefit Plan provides:

- (5) "Pensioner" shall mean any person who is receiving a pension, other than a deferred vested pension based on less than 20 years of credited service, under the United Mine Workers of America 1974 Pension Plan (or any successor thereto) whose last classified employment was with the Employer.

Article II.B. of the Employer's Benefit Plan provides:

B. Pensioners

Health benefits and life insurance under Article III hereof shall also be provided to any Pensioner who is receiving pension benefits under the 1974 Pension Plan, or any successor thereto, provided that (i) the Pensioner is not receiving 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, or (ii) that the Pensioner is not receiving a deferred vested pension based on less than 20 years of credited service. Notwithstanding (i) and (ii) immediately above, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan. Health benefits shall not be provided for any month in which the Pensioner earns more than \$200.

Article XX, Section (c)(3)(iii) of the NBCWA of 1978 provides:

(iii) The 1974 Benefit Plan and Trust shall continue after May 31, 1978, for the sole purpose of providing health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) from which he retired is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last classified employment was with a signatory Employer which is no longer in business.

Article II.F. of the 1974 Benefit Trust, as amended on March 27, 1978 provides:

F. Pensioners

Health and death benefits under Article III hereof shall also be provided to any Pensioner who receives pension benefits under the 1974 Pension Plan, or any successor thereto, and who would otherwise cease to receive benefits because the signatory Employer (including successors and assigns) with whom such Pensioner last worked as a classified Employee is no longer in business, provided that (i) such Pensioner is not receiving 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, or (ii) such Pensioner is not receiving a deferred vested pension based on less than 20 years of credited service. Notwithstanding the above, any Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, and who is not eligible for benefits under an individual employer benefit plan pursuant to Article XX, Section (c)(3) of the National Bituminous Coal Wage Agreement of 1978, shall be eligible for such benefits, subject to all other provisions of this Plan. Health benefits shall not be provided for any month in which the Pensioner earns more than \$200.

Question and Answer ("Q&A") H-16, adopted by the Trustees on July 21, 1978, pursuant to their authority under the 1974 Benefit Trust, provides:

Subject: DEATH BENEFITS
 HEALTH BENEFITS: "Successor" and "No Longer in Business"

Reference: 1974 Benefit Plan, as amended, Articles II F, G, and I; III B (1978)

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 Benefit 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.

Part II

Question: When is a company "no longer in business" for purposes of health and death benefit obligations of the 1974 Benefit Trust?

Answer: A company is "no longer in business" when

1. the company claims that it is no longer in business by notifying the Funds in writing that the company is no longer in business and will not resume operations and thus requests that the Funds, in reliance upon the company's statement, make payments to any appropriate beneficiaries eligible under provisions of the amended 1974 Benefit Plan and Trust; and
2. the company has not received income from the production or sale of coal, or transportation of coal, or related activities, for at least six months even if it retains a license to engage in coal mining or processing within the applicable state or states and retains an office.

A company may still be in business even if it satisfied #2 if circumstances clearly indicate that the company remains in business. For example, a company is still in business even if it has not mined coal for six months if the company is publicly seeking new employees or if the company indicates to its laid-off employees that it will re-employ them at an early future date.

Discussion

Under Article XX, Section (c)(3)(iii) of the NBCWA of 1978 and Article II.F. of the 1974 Benefit Trust, as amended on March 27, 1978, the 1974 Benefit Trust is required to provide benefits only to 1974 Pension Plan Pensioners who would cease to receive such benefits because the signatory Employer, including its successors and assigns from which they retired is no longer in business. The Trustees have defined "successor" and "no longer in business" in Q&A H-16, set forth above. Under the criteria of Q&A H-16, Employer A is no longer in business, because it has not owned or operated any coal mines since March 1980.

Employers B and C, however, are successors to Employer A, within the meaning of Q&A H-16, for the following reasons: Employers B and C signed the NBCWA of 1978 for Mines H and S respectively, and have continued to operate those mines, with no significant suspension of operations following the transfer of ownership of the Mines. The Mines are in the same location as when they were operated by Employer A, and the work functions have continued relatively

unchanged. Following the transfers of ownership, a majority of the Employees working for Employers B and C at Mines H and S were previously employed at these Mines by Employer A. Finally, as part of the transfer of ownership, Employer A transferred most of the assets of the Mines to Employers B and C. Because Employers B and C are successors to Employer A and are still in business, the Pensioners are not eligible for benefits coverage from the 1974 Benefit Trust.

Under Article XX, Section (c)(3)(i) of the NBCWA of 1978 and Article II.B. of the Employers' Benefits Plans, a signatory Employer is required to provide benefits coverage to Pensioners whose last classified employment was with the Employer. Employers are required to guarantee such coverage during the terms of the NBCWA of 1978.

Employer A was signatory to the NBCWA of 1978 and, therefore, was required to provide benefits coverage to the Pensioners during the term of that Agreement, which expired on March 27, 1981. Employer A did provide such coverage. However, Employer A did not sign the NBCWA of 1981. Therefore, Employer A was not required by the terms of that Agreement to provide benefits coverage to the Pensioners during the term of that Agreement. And, when they took over Mines H and S, Employers B and C did not agree to provide benefits coverage to Employer A's Pensioners.

The Trustees are aware that the Pensioners also contend that they are entitled to receive benefits from Employer A because Employer A failed to comply with Article I of the NBCWA of 1978 at the time it sold the mines to Employers B and C. Article I provides that:

each Employer promises that its operations covered by this agreement shall not be sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement.

It would appear from the sales agreements between Employer A and Employers B and C that Employer A did not comply with this provision. This issue, however, involves an interpretation of the NBCWA of 1978 outside the scope of the exemption granted to the Trustees by the Department of Labor. Under that exemption, the Trustees may resolve disputes only as to questions of eligibility and the nature of benefits under the terms of the Employers Benefits Plans. Therefore, the Trustees may not address the merits of the claim raised by the Pensioners under Article I of the NBCWA of 1978.

Opinion of the Trustees

It is the opinion of the Trustees that Employers B and C are successors to Employer A within the meaning of Article II.F. of the 1974 Benefit Trust and Q and A H-16. Therefore, the 1974 Benefit Trust is not responsible for providing benefits coverage to the Pensioners. As signatories, Employers A, B and C were all aware of the requirements of Article I of the NBCWA of 1978 to protect the beneficiaries. The Trustees believe that Employer A is clearly responsible under Article I of the NBCWA of 1978, but that the exemption issued by the

Department of Labor does not permit them to decide that question. The Trustees also believe that the provisions in the sales agreements between Employers A and B and A and C may be unenforceable as against public policy and the spirit and intent of the NBCWA. Accordingly, the Trustees reserve their opinion as to the liability of Employers B and C as successors under the NBCWAs of 1978 and 1981 and the Employer's Benefit Plans.

Trustee Combs, dissenting:

I agree that Employer A is liable under the factual circumstances. I disagree that the Trustees do not have the authority to decide this question under the exemption issued by the Department of Labor. Inherent in the authority to decide whether or not the 1974 Benefit Trust is liable must be the authority to decide whether Employers A, B, and C are liable in the first instance. If Employer A is found not to be liable, then either Employer B or C, or, if they are not liable, then the 1974 Benefit Trust, should be held liable.

HARRISON COMBS, Chairman

JOHN J. O'CONNELL, Trustee

PAUL R. DEAN, Trustee