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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 81-41, June 29, 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 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 for a Pensioner by the Employer under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

### Background Facts

The Complainant worked for Employer A from March 1968 to his retirement, March 6, 1980, and was awarded a 1974 Plan pension effective April 1, 1980. Employer A was signatory to the National Bituminous Coal Wage Agreement of 1978 and is also signatory to the National Bituminous Coal Wage Agreement of 1981.

On January 31, 1980, Employer A entered into an agreement with Employer B, a signatory to the National Bituminous Coal Wage Agreement of 1978, under which Employer B purchased coal produced by Employer A on land leased by Employer B from a third party. During the period when Employer B was buying coal from Employer A, Employer B, who is also a signatory Employer, provided coverage to Employer A's Employees and Pensioners.

Employer A ceased mining coal under the agreement with Employer B on April 1, 1981, at which time Employer B stopped providing benefits coverage for the Complainant and other former employees of Employer A. When requested to provide benefits coverage for the Complainant and others, Employer A stated it was out of business and that they should contact Employer B for benefits coverage. In fact, Employer A did not go out of business and is operating coal mines in another state.

### Dispute

Is Employer A or Employer B responsible for providing benefits coverage to the Complainant and his dependents?

Positions of Parties

Position of Complainant: The Employer is responsible for providing benefits coverage inasmuch as it is not out of business.

Position of Employer A: Employer B should provide benefits coverage for the employees who retired during the period it was buying coal from Employer A.

Pertinent Provisions

Article I. (5) of the Employer's Benefit Plan, as amended in 1981, which provides:

- (5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service, or (ii) 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, under the 1974 Pension Plan (or any successor thereto), whose last classified signatory employment was with the Employer, subject to the provisions of Article II B of this Plan.

Article II. B. of the Employer's Benefit Plan, as amended in 1981, which provides:

B. Pensioners

Health benefits and life insurance under Article III hereof shall be provided to Pensioners as follows:

- (1) Any Pensioner who is not again employed in classified signatory employment subsequent to
  - (a) such Pensioner's initial date of retirement under the 1974 Pension Plan, and
  - (b) June 7, 1981, shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan....

Discussion

Employer A's Benefit Plan provides that Employer A is responsible for the provision of health and other non-pension benefits coverage for 1974 Pension Plan pensioners whose last classified employment was with Employer A.

Information in the Complainant's file indicates he is a 1974 Pension Plan pensioner, that he satisfies the definition of Pensioner under Employer A's Benefit Plan, and that his last classified

employment was with Employer A. Therefore, under the terms of Employer A's Benefit Plan, Employer A is responsible for providing benefits coverage to the Complainant and his dependents.

Employer A claims, however, that he should not be required to provide this coverage because, under his agreement with Employer B, Employer B agreed to pay for such coverage for Employer A's Employees and Pensioners. Although Employer A has submitted a copy of the agreement between him and Employer B, there is no evidence in that agreement that Employer B assumed Employer A's obligation to provide this coverage and Employer A has submitted no other evidence in support of his position. In any event, even if Employer A delegated to Employer B his duty to provide such coverage, this would not relieve Employer A of his obligation under the Employer's Benefit Plan.

#### Opinion of the Trustees

It is the opinion of the Trustees that Employer A is responsible for the provision of health and other non-pension benefits coverage for the Complainant and his dependents.