
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 81-46, July 27, 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 benefit coverage for the Pensioner by his last Employer under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

Background Facts

The Complainant, who was born March 10, 1916, last worked for Employer A during April 1979. He was awarded a UMWA 1974 Pension Plan pension from the Funds, effective May 1, 1979.

Employer A had mined coal for Employer B from 1975 to April 1, 1981. Employer B, who is also a signatory Employer, provided coverage to Employer A's Employees and Pensioners. The Complainant was provided coverage up to April 1, 1981, Employer A advised his Employees and pensioners that he could not provide coverage for them because he was out of business. In fact, Employer A is operating other mines which are not located on Employer B's property.

Dispute

Is Employer A or Employer B responsible for the provision of health and other non-pension benefit coverage for the Complainant and his dependents?

Positions of Parties

Position of Complainant: He wants to know who is responsible for providing him with benefit coverage.

Position of Employer A: Employer B provided benefits for the Complainant until June 1, 1981. Employer A never provided these benefits for him. In addition, Employer B made contributions

to the Funds for the classified hours worked by Employer A's employees. Therefore, Employer A feels that he is not responsible for providing benefits that he did not provide in the past.

Pertinent Provisions

Article I. (5) of the Employer's Benefit Plan which provides:

Definitions

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.(1) (a) (b) of the Employer's Benefit Plan which provides:

B. Pensioners

Health benefits and life insurable 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

Article II. B. (1) of the Employer's Benefit Plan requires that the last Employer for which a 1974 Pension Plan pensioner performed classified employment is responsible for providing him with benefit coverage after his retirement.

Inasmuch as the Complainant's last signatory classified employment was with Employer A, that Employer is responsible for providing health and other non-pension benefit coverage for him and his dependents.

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Employer A claims, however, that he should not be required to provide this coverage because Employer B has always provided the coverage. Although Employer B may have assumed Employer A's responsibility to provide Employer A's Employees with coverage for a period, that did not relieve Employer A of his contractual obligation to provide such coverage under the terms of the National Bituminous Coal Wage Agreement of 1981 and the Employer's Benefit Plan. Consequently, Employer A is responsible for providing coverage to the Complainant and his eligible dependents.

Opinion of the Trustees

The Trustees are of the opinion that Employer A is responsible for providing health and other non-pension benefit coverage for the Complainant and his eligible dependents commencing June 7, 1981.