

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case Nos: 81-207 and 81-208, June 28, 1983

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 benefits coverage for Employees by the Employer under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

Background Facts

The Complainants and their fellow Employees were laid off by the Employer in August 1982. Funds' records show that classified hours were reported for the Complainants for the period November 2, 1981 through July 31, 1982. Each had more than 500 but less than 2,000 hours reported for him.

Health services charges were incurred by the Complainants or their dependents during the period following June 1, 1982, and they were informed that they did not have benefits coverage because the Employer had not paid the insurance premiums since May 1982,

A Funds' audit of the Employer's records indicates that it is not currently operating, having been idle since October 8, 1982, However, the Employer does plan to operate in the future.

Dispute

Is the Employer responsible for the provision of benefit coverage for the Complainants?

Positions of Parties

Position of Complainant: They want to know whether the Employer is responsible for payment of the health services bills which were incurred while they were employed.

Position of Respondent: The Employer has not replied to our correspondence.

Pertinent Provisions

Article XX(3)(e)(ii) of the 1981 Wage Agreement provides:

The 1974 Benefit Plan and Trust provides 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) for whom such miner last worked in signatory classified employment 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 signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

- (a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again;
- (b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

Article I. (1)(2)(4) of the Employer's Benefit Plan provides, in pertinent part:

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (name of company).
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1981, as amended from time to time and any successor agreement.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits thereunder.

Article II. A. (1) of the Employer's Benefit Plan provides, in pertinent part:

Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows: .

A. Active Employees

Benefits under Article III shall be provided to any Employee who:

1. is actively at work* for the Employer on the effective date of the Wage Agreement; or

* Actively at work includes an employee of the Employer who was actively at work on March 26, 1981, and who returns to active work with the Employer within two weeks after the effective date of the wage Agreement.

Article III. E.(1)(a) of the Employer's Benefit Plan provides, in pertinent part:

Article III - Benefits

D. General Provisions

1. Continuation of Coverage
 - (a) Layoff

If an Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment insurance coverage is as follows:

<u>Number of Hours Worked for the Employer in the 24- Consecutive Calendar Month Period Immediately Prior to the Employer's Date Last Worked</u>	<u>Period of Coverage Continuation from the Date Last Worked</u>
2,000 or more hours	Balance of month plus 12 months
500 or more but less than 2,000 hours	Balance of month plus 6 months
Less than 500 hours	30 days

Article XX 10 (b) of the National Bituminous Coal Wage Agreement of 1981 provides:

Article XX 10 Health Care:

Health care benefits are guaranteed during the term of this Agreement subject to the terms of this Agreement at the level of benefits provided in the 1950 Benefit Plan; 1974 Benefit Plan, and the Employer's Benefit Plan.

(b) Working miners will be provided health benefits through their individual Employer's benefit plan.

Explanatory Note on Employer Provided Health Plan provides:

Active miners and their surviving spouses and dependents, and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan, will receive health care provided by their Employer through insurance carriers. A Health Services Card identifying the Participant's eligibility for benefits under the health plan shall be provided by the Employer.

The Trustees of the UMWA Health and Retirement Funds shall resolve any disputes to assure consistent application of the health plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust.

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Discussion

The Funds' audit of the Employer's records indicates that it has not operated since October 8, 1982, but does plan to operate in the future. Therefore, the Employer is not out of business within the meaning of Article XX (c)(3)(ii) of the National Bituminous Coal (Wage Agreement

of 1981. Consequently, the Complainants are not eligible for benefits coverage under the United Mine Workers of America 1974 Benefit Plan.

Under Article III. D. of the Employer's Benefit Plan, the Employer is required to provide benefits coverage to laid-off Employees. The amount of such coverage depends on the number of hours the Employees worked for the Employer during the 24-month period prior to their date last worked. Inasmuch as each of the Complainants has worked more than 500 but less than 2,000 classified hours for the Employer, they were eligible for benefit coverage, as active Employees, during the period that the Employer discontinued premium payments June 9, 1982 through August 1982, and as laid-off Employees from August 1982 through February 28, 1983.

Opinion of the Trustees

The Trustees are of the opinion that the Employer is responsible for the provision of benefit coverage for the Complainants during the period June 1, 1982 through February 28, 1983.