

OPINION OF TRUSTEES

---

In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 81-231 - January 30, 1984

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 benefits coverage for a laid-off Employee by the Employer under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

Background Facts

The Complainant claims that he worked for the Respondent, as a classified employee, from April 11, 1977 to August 27, 1982, when he was laid-off. He claims to have worked more than 2,000 hours during the 24 consecutive calendar month period immediately prior to his date last worked.

The Respondent reported hours to the Funds for the Complainant through March 27, 1981. During the August 1980 - March 1981 period, the Respondent reported 636 hours for the Complainant. In addition, the Complainant submitted copies of his pay statements for the January 1, 1982 - August 31, 1982 period which indicate he worked 1,177-1/2 hours. His representative submitted copies of the UMWA District check-off records which show the Respondent checked off working dues from the Complainant's pay during the period July 1981 through December 1981, but there is no record of hours actually worked during that period.

In 1982, Funds' staff conducted an audit of the Respondent. The audit revealed that, for the periods March 27, 1978 through March 26, 1981 and June 8, 1981 through January 22, 1982, the Respondent under-reported by 3,029.87 hours the hours actually worked by its classified employees. The under-reporting of hours was due to, among other things, the failure of the company to report hours on all classified employees.

For the period July through December 1981, the period during which the Complainant does not have records of the hours he actually worked, the UMWA check-off records show that 10 to 13 employees, including the Complainant, paid dues as active employees of the Respondent.

The Respondent has refused to provide the Complainant with continuation of coverage.

Dispute

Is the Respondent responsible to provide continuation of benefits coverage for the Complainant?

Position of the Parties

Position of Complainant: The Complainant asks whether the Respondent is responsible for the provision of benefits coverage.

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

Pertinent Provisions

Article I. (I), (2) and (4) of the Employer's Benefit Plan provide:

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 hereunder.

Article III. D. (1) (a) of the Employer's Benefit Plan provides:

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 Employee'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	Balance of month plus 6 months
Less than 500 hours	30 days

#### Discussion

Inasmuch as the Respondent did not provide its position in this dispute, the opinion of the Trustees must be based on the information at hand.

Documentary evidence in file indicates that the Complainant worked 1,813 1/2 hours for the Respondent during the periods August 1, 1980 through March 26, 1981 and January 1, 1982 through August 31, 1982. Union dues check-off sheets show that the Respondent checked-off working dues for the Complainant during the period July through December 1981.

A Funds' audit of the Respondent's records shows that the Respondent under-reported and did not accurately report classified hours for its Employees to the UMWA Health and Retirement Funds. The audit reveals the Respondent's Employees had worked 7,722 hours during the July 1, 1981 - December 31, 1981 period. The union dues check-off records show that for the months of July through December 1981, from ten (10) to thirteen (13) Employees, including the Complainant, paid dues as active Employees of the Respondent.

Assuming that each of the active Employees worked approximately the same number of hours in each month for which he paid dues, it appears that the Complainant worked more than 186 1/2 hours from July through December 1981, giving him a total of over 2,000 hours worked in the 24 consecutive calendar month period immediately prior to his date last worked.

Accordingly, the record contains sufficient evidence to conclude that the Complainant worked more than 2,000 hours during the 24-month period prior to his date last worked and that the Respondent is responsible for the provision of benefits coverage for the Complainant through August 31, 1983.

#### Opinion of the Trustees

Opinion of Trustees  
Resolution of Dispute  
Case No. 81-231  
Page 4

The Trustees are of the opinion that the Respondent is responsible for the provision of continuation of coverage for the Complainant and his eligible dependents from August 28, 1982 through August 31, 1983.