

OPINION OF TRUSTEES

In Re

Complainant: Surviving Spouse
Respondent: Employer
ROD Case No: 81-258 - November 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 life insurance benefit for which the Surviving Spouse is eligible under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

Background Facts

The Complainant's late husband was employed by the Respondent from April 8, 1982 to June 25, 1982. He had previously worked for the predecessor Employer from April 10, 1956 to April 3, 1982. On July 29, 1982, at age 59, he submitted a Pension Application to the 1974 Pension Plan. The respondent provided a Certificate of Retirement to the UMWA Health and Retirement funds which outlined the Employee's period of classified employment and indicated that he was paid Sickness and Accident benefits from May 20, 1982 to June 20, 1982. The Employee completed an Election of Pension Effective Date form, electing his pension to commence July 1, 1982. However, he died on September 9, 1982, before review of his Application was completed. The application was approved on November 17, 1982, the Employee was credited with 36-1/2 years of service, and the Complainant was paid for the pension benefits owed to the Employee for July, August, and September 1982. In addition, the Complainant's surviving Spouse Benefit became effective October 1, 1982.

The Complainant claims that the Employee was receiving payments from the Employer at the time of his death and she has submitted photocopies of payroll checks payable to the order of the Employee and dated May 27, 1982, July 8, 1982 and September 16, 1982. The Respondent's Representative has submitted photocopies of the Employee's Earnings Records which show that the checks were issued in payment for hours worked, holiday pay, clothing allowance, and vacation pay. The Respondent's Representative contends further that the Respondent's records show that the Employee retired on June 25, 1982.

Dispute

Is the Complainant entitled to the life insurance benefit due an Employee or a Pensioner?

Positions of the Parties

Position of Complainant: Her husband was not receiving pension benefits at the time of his death and, therefore, she is entitled to a life insurance benefit of \$25,000, payable upon the death of an Employee.

Position of Respondent's Representative: The Employee retired almost three months prior to his death and, therefore, the Complainant is entitled to the \$2,500 life insurance benefit payable upon the death of a Pensioner.

Pertinent References

Article I, (1), (2), (4), (5) and (6) of Employer's Benefit Plan provided

Article I - Definitions

The following terms shall have the meanings herein set forth:

1. "Employer" means (coal 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.
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,
6. "Beneficiary" shall mean ana person who is eligible pursuant to the Plan to receive health benefits as set forth in Article III hereof.

Article II A. (1) and B. (3) of the Employer's Benefit Plan provide:

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

*"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.

B. Pensioners

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

- (3) Any person who
 - (a) has been receiving a pension under the 1974 Pension Plan,
 - (b) has not been previously covered as a Pensioner under this Plan, and
 - (c) is employed in a classified job by the Employer after June 7, 1981, shall, upon subsequent retirement, be covered as a Pensioner under this Plan only if such person is credited with at least three or more years of service under the 1974 Pension Plan subsequent to the most recent date of employment in a classified job with the Employer.

Article III B, (1) (a), (2) (a) and (b) of the Employer's Benefit Plan provide:

Article III - Benefits

B. Life and Accidental Death and Dismemberment Insurance

(1) Active Employees

Life and accidental death and dismemberment insurance will be provided for Employees, as described in Article II, Section A and C (3), in accordance with the following schedule:

- (a) Upon the death of an Employee due to other than violent, external and accidental means, life insurance in the beneficiary.

(2) Pensioners

Upon the death of a Pensioner, as described in Article II, section B, life insurance shall be paid in a lump sum to the Pensioner's named beneficiary in the following amounts:

- (a) \$2,500 if such Pensioner had dependents at the time of death or
- (b) \$2,000 if such Pensioner did not have Dependents at the time of death

Article I. A (2), (3) and (4) of the UMWA 1974 Pension Plan provide:

A. Definitions

- 2. "Employer" means an employer who is signatory to the Wage Agreement, or, with respect to prior periods, was signatory to the bituminous coal wage agreement then in effect,.
- 3. "Participant" means any person who is employed in a classified job for an Employer after the effective date and any person entitled to receive pension benefits under the plan; provided however, that any person who is not employed in a classified job for an Employer on the effective date shall not become a participant until such person completes at least 1,000 hours of credited service within a 12-month period after the effective date, or unless such person is subject to the provisions of Article II (F) (3).
- 4. "Pensioner" means any person who is receiving a Pension pursuant to Article II of this plan.

Article II. A. of the UMWA 1974 Pension Plan provides:

A. AGE 55 RETIREMENT

Any participant who (a) has at least 10 years of signatory service or at least twenty years of credited service, including the required amount of signatory service as set forth in Article IV (C) (6), and (b) has attained the age 55 years (but not the age of 62) prior to retirement shall be eligible to retire on or after June 7, 1981, and shall upon his retirement (hereinafter "Age 55 Retirement") be eligible for a pension.

Article III C (1) and (2) of the UMWA 1974 Pension Plan Provides:

C. Application for Pension and Commencement, Suspension and Termination of Pensions

Payments of pensions shall be subject to the following:

- (1) The first payment on any pension shall be made as soon as possible after an application for pension has been received and shall be for the month following the month in which the Participant retires (Article I B) and becomes eligible for a pension in accordance with Article II; provided, however, that in the case of a deferred pension pursuant to Article III (A) (5), such payment shall be for the later of (a) the month specified by the Participant in his application for pension if such month is subsequent to the month in which such Participant attains age 55, or (b) the month in which the application for pension is received, but not later than the month following the month in which such Participant attains age 52,
- (2) The last payment shall be for the month in which the pensioner dies.

Section 401(a)(14) of the Internal Revenue Code requires that a plan provide that payment of benefits must commence no later than a specified date. Regulations interpreting this provision permit a plan to satisfy the commencement of benefits requirement by paying benefits retroactive to the plan's benefit commencement date, 26 C.F.R. S 1.401(a)-14(d).

Discussion

The Employee submitted an Application for Pension from the 1974 Pension Plan on July 29, 1982. His last credited service was for the period May 20, 1982 through June 20, 1982, during which he received Sickness and Accident benefits. The Election of Pension Effective Date form submitted by the Employee shows that he elected his pension to commence July 1, 1982,

Article III C.(1) of the 1974 Pension Plan Provides that the first payment of any pension shall be made as soon as possible after an application for pension has been received and shall be for the month following the month in which the Participant retires. Recognizing that in some cases it is administratively impossible to begin actual payments of benefits upon the required commencement date, IRS regulations provide for retroactive payment to be made within a reasonable time. Accordingly, a pensioner who receives such a retroactive payment is considered to have been receiving a pension in accordance with the requirements that benefit payments begin by a specified date.

Because the deceased had elected his pension to commence on July 1, 1982, and because the Complainant received retroactive pension benefits payable from that date, the deceased was "receiving a pension" and therefore a pensioner under the Employer's Benefit Plan and the UMWA 1974 Pension Plan at the time of his death.

Opinion of Trustees
Resolution of Dispute
Case No. 81-258
Page 6

Opinion of the Trustees

The Trustees are of the opinion that the Complainant is entitled to the \$2,500 life insurance benefit payable upon the death of a Pensioner.