

OPINION OF TRUSTEES

In Re

Complainant: Pensioners and Surviving Spouse
Respondent: Employer
ROD Case No: 81-264 - June 15, 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 ("UMWA") 1950 Benefit Plan and Trust ("1950 Benefit Plan"), 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 Pensioners and a Surviving Spouse by the Employer under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

Background Facts

The complaining Surviving Spouse's husband last worked for the Respondent on May 9, 1975 and died May 30, 1975, at age 56. She was authorized a Death Benefit (\$7,200) and health benefits coverage by the UMWA 1974 Benefit Plan ("1974 Benefit Plan") on September 2, 1975, effective June 1, 1975. The Death Benefit was to be paid in installment payments through June 30, 1980. The 1974 Benefit Plan paid these benefits through 1978. The Respondent continued the payment of Death Benefits and health benefits coverage due her commencing June 1, 1978. Her benefits coverage terminated June 30, 1980.

The complaining Pensioners' last classified signatory employment was with the Respondent. Benefits coverage was provided for them by the Respondent through September 30, 1982. The Respondent claims that it is financially unable to provide benefits coverage because the provision of benefits coverage for its laid-off, retired and disabled Employees has exhausted its liquid assets.

The Respondent Employer is signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981. The Respondent ceased mining coal at its mine in the Fall of 1979, but employed a few general maintenance workers through December 31, 1981, and provided them with benefits coverage, as provided by Article of the National Bituminous Coal Wage Agreement of 1981.

In late 1981, the Respondent sold 90% of its stock to another corporation. The Respondent has been trying to sell its plant and equipment since mid 1982.

Following an audit, the 1974 Benefit Plan determined that the Respondent is not "no longer in business" within the meaning of Article II.E.4 of the United Mine Workers of America 1974 Benefit Plan and Trust, because the Respondent is financially able to provide benefits coverage.

Dispute

Is the Respondent responsible for the provision of benefits coverage for the Complainants?

Positions of the Parties

Position of Complainants' Representative: The provision of benefits coverage is the sole responsibility of the Respondent and in the event the Respondent goes out of business, provision of benefits coverage becomes the responsibility of the 1974 Benefit Plan.

Position of Respondent: It claims that it has no liquid assets with which to provide benefits coverage for the Complainants.

Pertinent Provisions

Article XX, Section (c) (3) (i) of the 1981 Wage Agreement provides:

(c) 1974 Plans and Trusts

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier (s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the terms of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

Article III.B.(4) of the UMWA 1974 Benefit Plan and Trust, as adopted in 1974 provides:

B. Benefits payable to participants, their beneficiaries and dependents shall be as follows:

. . .

(4) A death benefit in the amount of \$7,500, plus an additional \$500 for each dependent in excess of five dependents, subject to a maximum of \$10,000, shall be paid in the case of a Participant referred to in Sections A, C(2) or C(3) of Article II hereof who dies leaving one or more dependents.

Article 5. (1), (2), (4), (5) and (7) of the 1981 Employer's Benefit Plan provides:

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.
- (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.
- (7) "Dependent" shall mean any person described in Section D of Article II hereof.

Article II. A. (2), 9 (1) (a) and (b), D. (1), E. (2) and (3) of the 1981 Employer's Benefit Plan provides:

Article II - Eligibility

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

A. Active Employees

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

(2) is on layoff or disabled from the Employer and had eligibility as of the effective date of the Wage Agreement Plan for coverage under the 1978 Employer's Benefit Plan ("prior Plan") as a laid-off or disabled employee. Coverage for such laid-off or disabled Employees shall not continue beyond the date when they would no longer have been eligible for such coverage, under the provisions of the prior Plan.

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. Notwithstanding (i) and (ii) of the definition of Pensioner in Article I (5) of this Plan, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977 shall be eligible for such benefits, subject to all other provisions of this Plan.

D. Eligible Dependents

Health benefits under Article III shall be provided to the following members of the family of any Employee, Pensioner, or disabled Employee receiving health benefits pursuant to paragraphs A, B, or C of this Article II;

1. A spouse who is living with or being supported by an eligible Employee or Pensioner;

E. Surviving Spouse and Dependents of Deceased Employees or Pensioners.

Health benefits under Article III shall be provided to (i) any unmarried surviving spouse (who was living with or being supported by the Employee or Pensioner immediately prior to the Employee's or Pensioner's death) and (ii) such spouse's unmarried surviving dependent children as defined in subparagraphs (2) and (5) of paragraph D, of an Employee or Pensioner who died:

2. Under conditions which qualify such spouse for a Surviving Spouse benefit under the 1974 Pension Plan or any successor thereto;

3. At a time which such Employee or Pensioner is entitled to receive health benefits pursuant to paragraph A, B, or C of this Article II, provided that (i) if such Employee or Pensioner died prior to the effective date of the Wage Agreement and the spouse is not eligible for a Surviving Spouse's benefit, then only for the period that the spouse is eligible to receive death benefits in installment payments pursuant to paragraph D of, Article III, or (ii) if such Employee or Pensioner died on or after the effective date of the Wage Agreement and the spouse is not eligible for a Surviving spouse's benefit and life insurance benefits or death benefits are payable in a lump sum, then only 60 months following the month of the death of such Employee or only for 22 months following the month of the death of such Pensioner. If life insurance benefits are not payable, health benefits shall be provided only to the end of the month in which the Employee or Pensioner died.

Article III.C.(1) of the 1981 Employer's Benefit Plan provides:

(1) Deaths Prior to December 6, 1977.

Death benefit payments shall be continued in those cases which were in pay status as of December 5, 1977, under the 1974 Benefit Plan, for deceased Employees and Pensioners, whose last classified employment was with the Employer, in the same manner and in the same amounts, as previously provided for in the 1974 Benefit Plan.

Discussion

Under Article XX, Section (c) (3) (i) of the 1981 Wage Agreement and Article II of the 1981 Employer Benefit Plans, a signatory Employer is required to provide benefits coverage to each UMWA 3974 Pension Plan Pensioner whose last signatory classified employment was with the Employer and to certain dependents of its Employees and Pensioners. This benefits coverage is guaranteed during the term of the 1981 Wage Agreement. Neither the 1981 Wage Agreement nor the 1981 Employer Benefit Plans contain any provision which discharges the Employer from the performance of this obligation during the term of the 1981 Wage Agreement. The Respondent therefore continues to have a contractual obligation to provide benefits in accordance with the terms of the 1981 Employer's Benefit Plan, regardless of the Respondent's operational status or financial condition.

There is no dispute that the complaining Pensioners' last signatory classified employment was with the Respondent: The Respondent is therefore responsible for the provision of benefits coverage for the complaining Pensioners and their eligible dependents.

The complaining Surviving Spouse does not meet the eligibility requirements of Article II. E. (3) of the 1981 Employer's Benefit Plan. Under Article II. E. (3) of the 1981 Employer's Benefit Plan, benefits coverage is provided for a surviving spouse, whose husband died prior to June 7, 1981 and who is not eligible for a Surviving Spouse's benefit, only for the period the spouse is eligible for death benefits under the Plan. Under Article III.C. of the Employer's Benefit Plan, death benefits based on a death prior to December 6, 1977 are continued only in the manner and amounts previously provided for in the 1974 Benefit Plan. The Surviving Spouse's husband died on May 30, 1975. She is not eligible for a Surviving Spouse benefit. She was eligible for death benefits in installment payments under the 1974 Benefit Plan until June 30, 1980. Death and health benefits were provided for her for the maximum 60 months after the death of the Employee. Therefore she has no continuing eligibility under the 1981 Employer's Benefit Plan.

In their Request for Advisory Opinion, the Complainants ask whether the 1974 Benefit Plan is liable for their benefits coverage. This matter is not one which the Trustees of the 1950 Benefit Plan may properly address pursuant to their authority under the Department of Labor exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974. The Trustees note, however, that the Trustees of the 1974 Benefit Plan previously determined that the Respondent does not satisfy the "no longer in business" definition of Article II. E. of that Plan, and, therefore, denied benefits coverage to the Complainants. Any additional question in this regard, based on a change in the Respondent's circumstances since the 1974 Benefit Plan's determination, should be addressed to the Trustees of the 1974 Benefit Plan.

Opinion of the Trustees

The Trustees are of the opinion that the Respondent is responsible for the provision of benefits coverage for the complaining Pensioners and their eligible dependents.

However, the Respondent is not responsible for the provision of benefits coverage for the complaining Surviving Spouse.

HARRISON COMBS, CHAIRMAN

JOHN J. O'CONNELL, TRUSTEE

PAUL R. DEAN, TRUSTEE