
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-327 - October 28, 1986

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., 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 health benefits coverage for an Employee by the Employer under the terms of the Employer Benefit Plan.

Background Facts

W&B Coal Company, a partnership owned by Dan and Virgil Wicker, operated a mine under lease from National Mines. W&B Coal was signatory to the National Bituminous Coal Wage Agreement of 1978 ("Wage Agreement"). In July 1980, National Mines terminated its purchase of coal from W&B Coal and operations at that mine ceased. Using substantially the same workforce and equipment as had been used at the National Mines site, Dan Wicker opened a new mine on Middle States property. These operations were carried on under the name of Wicker Brothers Coal Company, another partnership owned by Dan and Virgil Wicker. In November 1980, Dan Wicker signed the 1978 Wage Agreement on behalf of Wicker Brothers.

The Complainant was employed by Wicker Brothers from October 29, 1980 until December 20, 1980, when he was injured in a mine accident. He did not return to work, and correspondence from his physician dated May 7, 1982 indicates that he has been totally disabled since the accident. The Complainant contends that, as a result of his accident and disability, he is entitled under the Plan to one year of continued health benefits coverage. Wicker Brothers provided him with coverage through April 1, 1981, but ceased operations upon the expiration of the 1978 Wage Agreement on March 26, 1981.

The owners of Wicker Brothers reopened the National Mines site in June 1981 as W&B Coal Company, Inc., a corporation, and Dan Wicker signed the 1981 Wage Agreement on behalf of the corporation on June 6, 1981. The stock of the corporation was owned by Dan and Virgil

Wicker, and the corporation utilized substantially the same workforce and equipment as had Wicker Brothers and the W&B Coal partnership before that.

Dispute

Is W&B Coal Company responsible for the provision of continued health benefits coverage for the Complainant beyond April 1, 1981?

Positions of the Parties

Position of the Complainant: The Complainant asks whether W&B Coal Company is responsible for the provision of the Complainant's continued health benefits coverage through December 31, 1981.

Position of the Respondent: The Respondent has failed to inform the Funds of its position in this dispute.

Pertinent Provisions

Article XI, Section (b) of the National Bituminous Coal Wage Agreement of 1978 provides in pertinent part:

Any Employee with six (6) months or more of classified employment with the Employer who becomes disabled as a result of sickness or accident, so as to be prevented from performing his regular classified job, and whose disability is certified by a physician legally licensed to practice medicine, shall be eligible to receive Sickness and Accident Benefits under this Plan. An Employee whose disability is the result of a mine accident suffered while he has been a classified Employee of the Employer shall be eligible to receive Sickness and Accident Benefits effective with his first day of classified employment. Benefits will not be payable for any period during which the Employee is not under the care of a licensed physician.

Article XI, Section (c) of the National Bituminous Coal Wage Agreement of 1978 provides in pertinent part:

Benefits for disability resulting from an accident, either on or off the job, shall be payable for a maximum of 52 weeks, regardless of the length of the Employee's classified employment with the Employer at the time of the accident.

Article XI, Section (d) of the National Bituminous Coal Wage Agreement of 1978 provides in pertinent part:

Payment of Sickness and Accident Benefits shall not be made for any days during an Employee's disability for which he receives wage allowances pursuant to this

Agreement, but the duration of Sickness and Accident Benefits for which the Employee is eligible shall be extended by an equal number of days.

Article III. Section E. (1) of the Employer's Benefit Plan, as adopted in 1978, provides:

E. General Provisions

(1) Continuation of Coverage

(a) Layoff

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

Numbers of Hours Worked for the Period of Coverage
Employer in the 24 Consecutive Continuation from
Calendar Month Period Immediately the Date Last Worked
Prior to the Employee's Date Last
Worked

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

(b) Disability

Except as otherwise provided in Article II, Section C, if an Employee ceases work because of disability, the Employee will be eligible to continue health, life and accidental death and dismemberment insurance coverage while disabled for the greater of (i) the period of eligibility for Sickness and Accident benefits, or (ii) the period as set forth in the schedule in (a) above.

Article III. Section E. (2) of the Employer Benefit Plan, as adopted in 1978, which provides:

In the event of an economic strike at the expiration of the 1978 Bituminous Coal Wage Agreement, the Employer will advance the premiums for its health, vision care, and life and accidental death and dismemberment insurance coverage for the first 30 days of such strike. Such advanced premiums shall be repaid to the Employer by such Employees through a check-off deduction upon their return to work. Should such a strike continue beyond 30 days, the Union or such Employees may elect to pay premiums themselves.

Article II. Section A. (2) of the Employer's Plan, as amended in 1981, provides:

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

(2) is on layoff or disabled from the Employer and had continuing eligibility as of the effective date of the Wage Agreement 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.

Discussion

Under Article III. E. (1) of the Employer Benefit Plan, as adopted in 1978, health benefits coverage is provided to a disabled employee for the greater of his period of eligibility for Sickness and Accident benefits or his period of eligibility based on the hours he previously worked for the Employer. The Complainant was injured in a mine accident and his disability was certified by his physician. Therefore he would have been eligible to receive Sickness and Accident benefits from December 20, 1980 until December 31, 1981. This period of eligibility is greater than that established by his short period of service. Thus, under the 1978 Employer Benefit Plan, the Complainant was entitled to continued health benefits coverage from December 20, 1980 until December 31, 1981. Under Article II. A. (2) of the Employer Benefit Plan, as amended in 1981, such coverage is continued under the 1981 Plan for the period for which the Complainant would have been eligible under the prior Plan.

Inasmuch as W&B Coal and Wicker Brothers constituted substantially the same Employer, each may be considered signatory to both the 1978 and 1981 Wage Agreements and responsible for the provision of continued coverage to the Complainant for that period provided under the Employer Benefit Plan. For the period of the 1981 economic strike, the Employer was responsible for advancing the Complainant's insurance premium for the first 30 days of the strike, but was not responsible for paying the cost of the Complainant's coverage during the strike.

Opinion of the Trustees

The Respondent is responsible for the provision of benefits coverage to the Complainant through December 31, 1981, excluding the strike period.