

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-386 - May 29, 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 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. The dispute concerns the application of "hours of service" performed as a Union Safety Committeeman as "hours worked" to determine the period of continuation of coverage for a laid-off Employee by the Employer under the terms of the Employer's Benefit Plan. The Trustees hereby render their opinion on the matter..

Background Facts

The Complainant is the President of the local union having jurisdiction at the Respondent's mine. Because of vacancies on the Union Mine Safety Committee, the Complainant asserts that he acted as a Safety Committeeman when needed, and accompanied the Federal Mine Inspector as the local union's representative. The Complainant does not claim, nor is there any evidence to show, that the Respondent paid him for any of his Safety Committee work under Article III, Section (d), (6) and (7) of the National Bituminous Coal Wage Agreement of 1981. Additionally, no "Union Hours" were reported to the Funds during the 1981-1983 period.

The Complainant submitted a transcript of local union pay records which indicated that he was paid for more than 1,000 hours of union duties during 1981 and 1982. There was no breakdown of the number of hours spent as a Safety Committeeman or at any other duties.

The Respondent reported 1,626 "hours worked" for the Complainant during the period March 1, 1981, through February 28, 1983. The Complainant was laid off on March 11, 1983, and was provided continuation of coverage by the Respondent through September 30, 1983, based on 500 or more, but less than 2,000, hours worked.

Dispute

Is the Respondent responsible for the provision of continuation of coverage for the Complainant based on the combination of hours spent in the performance of union duties and hours worked in classified employment?

Positions of the Parties

Position of the Complainant's Representative: He is entitled to twelve months of continuation of benefit coverage, as he worked more than 2,000 hours in the twenty-four month period prior to his layoff.

Position of the Respondent: The Employer's Benefit Plan does not provide that Complainant's work for his Local Union should be credited as work for the Respondent. The Complainant was provided with continuation of coverage based on his hours worked.

Pertinent Provisions

Article I (1), (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 (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.

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:

Numbers of Hours Worked for

<u>the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to the Employee's Date Last Worked Date</u>	<u>Period of Coverage Continuation from the 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 III, Section (d)(1), (6), and (7) of the National Bituminous Coal Wage Agreement of 1981 provide:

Article III - Health and Safety

Section (d) Mine Health and Safety Committee

- (1) At each mine there shall be a Mine Health and Safety Committee made up of miners employed at the mine who are qualified by mining experience or training and selected by the local union. The local union shall inform the Employer of the names of the Committee members. The Committee at all times shall be deemed to be acting within the scope of their employment in the mine within the meaning of the applicable workers' compensation law.
- (6) Mine management and the Mine Health and Safety Committee shall meet monthly at times arranged by the parties for the purpose of reviewing mine accident prevention efforts, discussing mine accidents and resolving health and safety problems at the mine. Special meetings may be called by either party for the purpose of resolving safety matters.
- (7) The Employer shall be responsible for paying committee members for the performance of the following duties:
 - (i) Inspecting the entire mine and surface installations connected therewith with management on a regular basis mutually agreed upon by the Employer and the Committee, but in no case any less often than every three months. The Employer shall be responsible for paying each Committeeman one shift at his regular rate of pay

once in every three month period for performance of his duties under this paragraph.

- (ii) Committee members shall be paid at their regular straight time rate of pay for up to two hours for time spent in joint monthly meetings with the Employer provided for in paragraph (6).
- (iii) Investigating explosions and/or disasters including any mine fatality.

Discussion

The Complainant worked less than 1,700 hours in classified work for the Respondent during the 24-month period prior to his date last worked. Although the Complainant claims that he also spent time performing the duties of Mine Health and Safety Committee member, and asserts that such time is includable as hours worked, there is no evidence of the number of hours he spent in the performance of these duties. The Trustees therefore conclude that the Respondent is only responsible for the continuation of benefits coverage based on documented hours worked, in accordance with the schedule set forth in Article III D.

Opinion of the Trustees

The Trustees are of the opinion the Respondent is not responsible for the provision of continuation of coverage for the Complainant beyond September 30, 1983.