
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-400 - March 26, 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 concerning the provision of benefits coverage for a laid-off Employee under the terms of the Employer's Benefit Plan, and hereby render their opinion on the matter.

Background Facts

The Complainant was employed by the Respondent for a period of approximately five years prior to being laid off in December 1982, and had worked in excess of 2,000 hours in the twenty-four consecutive calendar month period immediately preceding his date last worked. On the basis of these hours, the Respondent provided benefits coverage for the Complainant through December 31, 1983.

In October 1983, the Respondent recalled the Complainant for a period of employment which lasted from October 18 through October 28, 1983, at which time he was once again laid off. The Respondent refused to consider hours worked during this brief period of re-employment for the purpose of calculating any further continuation of benefits coverage. The Respondent states that the Complainant is not entitled to continued coverage on the basis of this work, because he was advised that the work was temporary and that refusal of the temporary assignment would not adversely affect his seniority or future recall rights.

A review of Funds' records concerning hours reported by the Respondent for the Complainant indicates that the Complainant worked in excess of 2,000 hours in the twenty-four consecutive calendar month period immediately preceding October 28, 1983, his last date worked.

Dispute

Is the Respondent responsible for continuation of benefits coverage beyond member 31, 1983, on the basis of hours worked during the Complainant's period of temporary employment?

Positions of the Parties

Position of the Complainant: The Respondent's refusal to consider the hours worked during the most recent period of employment for the purpose of determining an extension of benefit coverage is in violation of Article XX of the National Bituminous Coal Wage Agreement of 1981.

Position of the Respondent: The Respondent has raised a question regarding the Trustee's authority to decide this case, on the basis that the issue in dispute is one involving temporary employment and relevant conditions thereto, which should be subject to the grievance procedures set forth in Article XXIII.

With regard to the actual provision of coverage for the Complainant, the Respondent notes that the Complainant was provided benefits coverage as set forth in the Employer's Benefit Plan at the time of his lay-off in December 1982. Because his service with the Respondent entitled him to a full year's coverage, such coverage was in effect at the time of the temporary recall and continued in effect through the month of December 1983. Therefore, he is not entitled to additional coverage stemming from his temporary employment.

Pertinent Provisions

Article XX Sections (c)(3)(i) and (e)(6) of the National Bituminous Coal Wage Agreement of 1981 provide in pertinent part:

Section (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...

Section (e) Responsibilities and Duties of Trustees

(6) Disputes arising under this Agreement with regard to the Employer benefit plan established in (c)(3) above shall be resolved by the Trustees. The Trustees shall develop procedures for the resolution of such disputes. Decisions of the Trustees shall be final and binding on the parties. Such disputes shall not be processed under the provisions of Article XXIII (Settlement of Disputes).

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 II A. (1) and (4) 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; or....
- (4) a new Employee will be eligible for health benefits from the first day worked with the Employer.

*"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.

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

Discussion

The Respondent has raised a question regarding the Trustees' authority to decide this dispute. Article XX, Section (c)(3)(i) of the 1981 Wage Agreement establishes that each Employer will provide an Employee benefit plan to provide health and other non-pension benefits for its Employees. Section (e)(6) of that same article specifically states that disputes arising under such plans "... shall not be processed under the provisions of Article XXIII (Settlement of Disputes)." It further states that such disputes "shall be resolved by the Trustees" and that the Trustees' decisions shall be final and binding on the parties." As the issue raised by the Complainant concerns his entitlement to benefits coverage, and that entitlement is governed by the terms of the Employer's Benefit Plan, it is the Trustees' position that they have the authority to decide this dispute.

As to the merits of the dispute, the Respondent contends that the Complainant is not entitled to any additional continuation of coverage based on his period of employment from October 18 through October 28, 1983, because that employment was temporary and the Complainant knew when he accepted the employment that he would not receive his full contractual rights. The Respondent states further that because the Complainant received a full twelve months of continued coverage based on his permanent employment, he is not entitled to any additional coverage beyond December 31, 1983.

Article III D. (1)(a) of the Employer's Benefit Plan provides that an Employee who ceases work due to layoff is entitled to continuation of health, life and accidental death and dismemberment insurance coverage based upon the "Number of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to the Employee's Date Last Worked." It

further defines the term of such continuation as relating to the "Period of Coverage Continuation from the Date Last Worked." Significantly, the Employer's Benefit Plan makes no distinction between permanent or temporary work assignments or permanent or temporary status in defining an Employee's eligibility for benefits coverage. Instead, under the clear language of the Employer's Benefit Plan, such eligibility is based on the number of hours worked for the Employer during the twenty-four consecutive calendar month period prior to the Employee's last date worked.

Because the Complainant last worked on October 28, 1983, the time period to be used in calculating hours worked for the purpose of continuation of coverage is the inclusive period of October 1981 through October 28, 1983. A review of Funds' records of hours reported by the Respondent on behalf of the Complainant for that time period demonstrates that the Complainant worked in excess of 2,000 hours for the Respondent. Therefore, pursuant to Article III D. (1)(a)1 the Complainant is entitled to continuation of health, life and accidental death and dismemberment benefits coverage through October 31, 1984.

The Respondent also states that the Complainant is not entitled to additional Benefits coverage because, when he was laid off in October 1983, he was already receiving continuation of coverage based on hours worked prior to a previous lay-off in December 1982. Apparently the Respondent believes that the Complainant used up the hours he worked in the twenty-four month period prior to his 1982 lay-off and cannot count these hours in order to determine his eligibility for continuation of coverage following his 1983 lay-off. As the Trustees decided in ROD 262, however, the Employer Benefit Plans do not permit an Employer to reduce the total amount of an Employee's "hours worked for the Employer in the 24 consecutive calendar month period," within the meaning of Article III D., to reflect periods of continuation of coverage provided during that period. Instead, the total number of hours worked for the Employer during the prior twenty-four month period must be counted in determining eligibility for continued coverage after a layoff.

Opinion of the Trustees

The Respondent is responsible for continuation of benefits coverage for the Complainant through October 31, 1984.