
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-422 - April 30, 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 an Employee under the terms of the Employer's Benefit Plan. The Trustees hereby render their opinion on the matter.

Background Facts

Prior to the time the Respondent leased the mine site, the Complainant had been employed at the mine site by the two previous lessors in classified positions, the last of which had been as a truck driver. At the time the Respondent began operations at the site, it re-employed all employees of the previous lessor with the exception of the Complainant and the other employees who had last been employed as truck drivers on or about September 6, 1981.

On April 8, 1983, the Respondent advised these men that coal hauling activities would not be performed by its employees but, rather, such duties would be contracted out.

The issue of the Respondent's right to contract out duties previously performed by employees of the mine while any such employees remained on lay-off was raised through the grievance procedure. On May 20, 1983, the Arbitrator ruled that the Respondent was a successor to the previous leaseholders and was thereby prohibited from contracting out the coal hauling duties. Since such activities were performed by contract haulers for a brief period, from April 26 through May 2, 1983, the Respondent was required to make the proper employee whole and pay the Complainant for these days during which he would otherwise have been re-employed (April 26, 27, 28, 29 and May 2, 1983). The Respondent ceased operations at the mine on May 2, 1983, but did pay wages to the Complainant as required by the Arbitrator.

On April 30, 1983, the Complainant's wife gave birth to a baby. The Respondent refused to accept responsibility for payment of medical expenses associated with the delivery. This issue was raised to the Arbitrator for clarification of his order to make the employee whole. On July II, 1983, the Arbitrator issued a letter clarifying the above referred award by requiring the Respondent to tender premiums to the appropriate insurance carrier for one month's coverage for medical benefits provided in the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981.

The Complainant has continued to experience difficulties over unpaid medical claims.

Dispute

Is the Respondent responsible for payment of claims for maternity and obstetrical services provided to the Complainant's wife?

Positions of the Parties

Position of the Complainant: The Respondent should be required to pay for those services which would have been covered had the Respondent not acted wrongfully toward the Complainant.

Position of the Respondent: The Respondent's obligation to the Complainant was limited to that of tending one month's premiums for medical coverage to the appropriate insurance carrier by virtue of the specific language of the Arbitrator's award which, on clarification, specifically excluded any liability for medical expenses.

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

Article XX - Health and Retirement Benefits (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...

Pertinent References

Article I (1), (I), (3) and (4) of the Employer's Benefit Plan provide:

Article I - Definitions

- (1) "Employer" means (name of coal company).

- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1981, as amended from time to time and any successor agreement.
- (3) "Plan Administrator" shall mean (name of coal company).
- (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

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...
- (4) A new Employee will be eligible for health benefits from the first day worked with the Employer.

Article III D. (1) (a) of the Employer's Benefit Plan provides:

Article II - 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:

*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.

Numbers of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to <u>the Employee's Date Last Worked</u>	Period of Coverage Continuation from <u>the Date Last Worked</u>
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1,000 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

Article II A. of the Employer's Benefit Plan requires the Employer to provide benefits coverage for active Employees. Although the Complainant was not recalled to work by the Respondent at the time the mine resumed full operations under the Respondent's lease, it has been determined by an Arbitrator that the failure to recall the Complainant was improper. The Arbitrator required the Respondent to "make whole" the grievants, including the Complainant, by payment of an equivalent number of shifts to that which they had been denied.

In previous decisions, the Trustees have confirmed that back pay awards are to be treated as hours worked and credited for benefit eligibility determination purposes as time spent in the performance of classified duties. Therefore, because of the Arbitrator's award, the Complainant must be considered an active Employee of the Employer from April 26 through May 1, 1983, and a laid off Employee of the Employer thereafter. Therefore, as an active Employee of the Respondent, the Complainant was entitled to benefits coverage under the provisions of Article II A from April 26 through May 2, 1983. Further, having worked for a period of five (5) days for the Employer in the 24 consecutive calendar month period immediately prior to his last date worked, the Complainant is entitled to continued benefits coverage under the provisions of Article III D. for a period of thirty (30) days following his date last worked. The Complainant would, therefore, be eligible for continued coverage through June 1, 1983.

The Respondent's Representative has taken the position that the Respondent's liability in this case is limited to payment of insurance premiums. Article XX Section (c) (3) (i) of the Wage Agreement requires the Employer to provide benefits at the level set forth in the Employer Benefit Plans. Accordingly, the Respondent is responsible for paying the Complainant's claims subject to any limitations set forth in its Employer's Benefit Plan.

Opinion of the Trustees

The Respondent is responsible for the provision of benefits coverage for the Complainant and his eligible dependents from April 26 through June 1, 1983, under the terms of its Employer's Benefit Plan.