

OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 81-449 - July 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 a Pensioner by his last Employer under the terms of the Employer's Benefit Plan. The Trustees hereby render their opinion on the matter.

Background Facts

During the period October 1978 through December 9, 1981, the Complainant drove his own truck to haul coal for the Respondent, a trucking company engaged in the hauling of coal for signatory Employers. The Respondent arranged to pay the Complainant according to a formula based on a fixed rate per ton. On a weekly basis, he was advanced an amount equivalent to the prevailing union rate times the number of hours worked, minus applicable withholding, Social Security, unemployment and Workers' Compensation taxes, union dues, royalty payments and insurance premiums. The gross weekly advances, including benefits, were then deducted from the amount earned using the fixed rate per ton formula, and the Complainant was paid the balance.

Due to the declining coal market, the Respondent laid off four of its truck drivers in December 1981. Because of his seniority, the Complainant was not laid off. However, he no longer drove his own truck under the above relationship. Instead, he began to drive one of the Respondent's trucks and did so from December 10, 1981, through his date last worked, May 4, 1982. During that period, the Respondent paid the Complainant and otherwise treated him in a fashion consistent with terms and conditions extended to the other drivers employed by the Respondent.

The Complainant filed an application for pension under the 1974 Pension Plan on August 12, 1983. The application was approved effective August 1, 1983, based on the Complainant's more than twenty (20) years of classified service in the coal industry. The Complainant was awarded pension credit for the period December 10, 1981, through May 4, 1982, based on a determination that he was an Employee of the Respondent at that time. He was not awarded pension credit for the period October 1978 through December 9, 1981, as he was considered an independent

contractor during that period. The Respondent was mailed a copy of the Complainant's pension approval letter, dated December 23, 1983.

The Respondent has denied responsibility for the provision of benefits coverage for the Complainant because it claims that the Complainant's last employment with it was as a self-employed trucking contractor and not as an Employee. the Respondent admits, however, that from December 10, 1981, through May 4, 1982, the Complainant operated one of the Respondent's trucks and was compensated on an hourly basis and received compensation and benefits comparable to ... fits] ... employees."

Dispute

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

Positions of the Parties

Position of the Complainant: The Complainant meets the requirements of eligibility as a Pensioner and, therefore, the Respondent is responsible for the provision of benefits coverage for the Complainant.

Position of the Respondent: It is the Respondent's position that it is not obligated to provide benefits coverage for the Complainant as the Complainant does not satisfy the definition of "Employee" under Q&A P-22 (81) and common law and was, therefore, an independent contractor during the period in question.

Pertinent References

Article I, (1), (2), (4) and (5) of the Employer's Benefit Plan provide:

Article I: Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (trucking 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 & 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.

Article II B. (1) (a) and (b) 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:

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.

Appendix B of the Wage Agreement of 1981 provides, in pertinent part:

Appendix B - Part III

PREPARATION PLANTS AND OTHER SURFACE FACILITIES FOR DEEP OR SURFACE MINES

CLASSIFICATION JOB TITLE WITHIN CLASSIFICATION

3-A Mobile	Truck Driver, Coal
Equipment	Truck Driver, Gob or Refuse
Operator	Truck Driver, Haulage

Truck Driver, Heavy Duty
Truck Driver, Heavy Duty, Gob

Q&A H-10(61) (1) provides:

Subject: HEALTH BENEFITS; Employer Responsibility for Health and Other Non-Pensioner Benefit Coverage of a 1974 Plan Pensioner.

Reference: NBCWA Section (c) (3); Employer Benefit Plan Article II, B, (3).

Question:

- (1) A 1974 Plan pension applicant who had worked for 20 years in a classified job for signatory employer A, was last employed in a classified job for signatory employer g His period of employment with employer B lasted 3 months.

Which employer is responsible for his health and other non-pension benefit coverage upon approval of his pension?

Answer:

- (1) Employer B, his last employer.

Q&A P-II (81) provides:

Subject: PENSION, "Employee" - Common-law Employee, Self-employment

Reference:(5OP) IV A, B; (74P) IV A, B

Question:

What are the standards for determining whether a person is working as an "employee" or is self-employed?

Answer:

The decision about whether a person is working as an "employee" must be made by the Funds on a case-by-case basis, applying the common-law "right to control" test as described below.

In general, a common-law approach is used in determining whether an individual falls within an employer-employee relationship, placing primary emphasis on the alleged employer's right of control. The so-called "right of control" test is applied in factual situations as follows: If the recipient of the services in question (the alleged employer) has a right to control not only the end

to be achieved, but also the means to be used in reaching such result, an employer-employee relationship exists as a matter of law; otherwise, there exists an independent contractor or self-employed relationship. Such factors as the degree of supervision of a company over the performance of the person's duties, including such matters as whether the company has the right to discipline the person, whether the person is free to refuse work, and generally, whether a company exercises a significant day-to-day supervision over work performed by the person are relevant and should be taken into consideration. The application of this right-to-control test is not a mechanical one in any case, but involves careful balancing of all factors bearing on the relationship.

However, if the person is treated as self-employed for Social Security tax purposes, there is a rebuttable presumption that he is self-employed for Funds' purposes. This factor, however, is non-determinative; the "right to control" tests described above must be applied if the person challenges the rebuttable presumption with proof that he is actually working as a common-law employee, and is not self-employed.

In any event, if the person is determined to be an "employee," the Funds must still determine whether such person is performing a classified job and whether the person's employer is a signatory employer.

Discussion

The Respondent argues that it is not responsible for the Complainant's benefits coverage because, under Q&A P-II (81) and common law, he was an independent contractor, not an Employee, of the Respondent during the entire period in question. Under Q&A P-II (81) and common law, several factors would be considered in determining whether an individual is an employee, including whether the employer has the right to control the end result as well as the means of achieving that result, the degree of day-to-day supervision over duties, the right to discipline, and whether the individual can refuse work. The Trustees agree that the Complainant appears to have been a self-employed contractor prior to December 10, 1981, for the majority of time he was associated with the Respondent. However, in his affidavit of May 10, 1984, the Respondent states that the Complainant operated one of the Respondent's trucks during the period December 10, 1981, through May 4, 1982, and was paid and provided benefits on a basis consistent with that of its other employees. Based on these facts, the Complainant must be considered an Employee of the Respondent from December 10, 1981, through May 4, 1982. Therefore, the Complainant was last employed in classified signatory employment with the Respondent.

Inasmuch as the Complainant is now receiving a 1974 Plan Age 55 Retirement Pension, effective August 1, 1983, based on more than 20 years of classified service, and his last classified signatory employment was with the Respondent, the Respondent is responsible for the provision of benefits coverage for the Complainant as provided under Article II B. (1) of the Employer's Benefit Plan and Q&A H-10 (81).

Opinion of the Trustees

The Respondent is responsible for the provision of benefits coverage for the Complainant and his eligible dependents commencing August 1, 1983, and continuing for as long as he continues to meet the provisions of Article II B. of the Employer's Benefit Plan.