
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 81-500 - December 17, 1984

Board of Trustees: Harrison Combs, Chairman; Joseph P. Brennan, Trustee; William Miller, Trustee; Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 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 provision of benefits coverage for a Pensioner by the Employer under the terms of the Employer's Benefit Plan. They hereby render their opinion on the matter.

Background Facts

The Complainant, whose birthdate is June 17, 1919, worked for J&J Trucking, Inc. as a truck driver hauling coal for the Consolidation Coal Company from May 11, 1976 to March 31, 1982 when he was laid off. J&J Trucking, Inc. provided benefits coverage for him through March 31, 1983.

The Complainant filed an Application for Pension with the UMWA 1974 Pension Plan on July 29, 1982. The pension was approved November 1, 1983, effective April 1, 1982, based on a total of 18 1/4 years of credited service.

J&J Trucking, Inc. claims that the Complainant worked for Master Construction - General Contractor (Master Construction), a signatory employer, after March 31, 1982, and that the Complainant refused recall by J&J Trucking, Inc., thereby quitting his employment with J&J. According to a statement from Master Construction, the Complainant was employed from June 5, 1983 to June 19, 1983, and earned \$256.

J&J Trucking, Inc. contends that, since it is no longer hauling union coal, it must be considered to be out of business and not responsible for the provision of benefits coverage. J&J claims that either Master Construction, Consolidation Coal Company, or the UMWA 1974 Benefit Plan should provide benefits coverage for the Complainant.

J&J Trucking has submitted a copy of the group benefits plan underwritten by the Travelers Insurance Company, which it provides for its Employees. This Plan differs generally from the

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standard Employer benefit Plans and specifically deviates from the standard Plans as it pertains to the determination of a pensioner's eligibility for health benefits coverage.

Dispute

Under which Plan is the Complainant eligible to receive benefits coverage as a Pensioner?

Positions of the Parties

Position of Complainant's Representative: J&J Trucking, Inc. is responsible for the provision of benefits coverage for the Complainant and his eligible dependents under Article XX (c) (3) of the National Bituminous Coal Wage Agreement of 1981.

Position of the Respondent: J&J Trucking, Inc. is no longer hauling union mined coal. It should, therefore, be considered out of business and not responsible for the provision of benefits coverage. Alternatively, since J&J Trucking, Inc. was not the Complainant's last signatory employer, either Master Construction, Consolidation Coal Company, or the UMWA 1974 Benefit Trust should provide coverage.

Pertinent Provisions

Article II, Section (c) (3) (i) and Section (e) (6) of the National Bituminous Coal Wage Agreement of 1981 provide:

Article XX --Health and Retirement Benefits

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 as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

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 (5) of the Employer Benefit Plans 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.
- (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 G 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 (2) and (3) of the standard Employer Benefit Plans 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:

- (2) Any person who
 - (a) has been covered as a Pensioner under this Plan, and
 - (b) is again employed in classified signatory employment after June 7, 1981, with an employer signatory to the Wage Agreement, other than the Employer, shall have

coverage under the Plan suspended during such period of employment. If such person is credited with at least three or more years of service under the 1974 Pension Plan after June 7, 1981, while so employed with the same employer, coverage shall be terminated under this Plan.

(3) Any person who

(a) has been receiving a pension under the 1974 Pension Plan,

(b) has not been previously covered as a Pensioner under this Plan,

and

(c) is employed in a classified job by the Employer after June 7, 1981, shall, upon subsequent retirement, be covered as a Pensioner under this Plan only if such person is credited with at least three or more years of service under the 1974 Pension Plan subsequent to the most recent date of employment in a classified job with the Employer.

Discussion

The Complainant retired from employment in the coal industry after he was laid-off by J&J Trucking, Inc. on March 31, 1982. He applied for a pension from the UMWA 1974 Pension Plan on July 29, 1982, but review of the application was not completed until November 1, 1983 due to problems of providing proof of service to the Funds. His pension was approved effective April 1, 1982, and he received pension benefits retroactive to that date.

Because the Complainant's pension was effective April 1, 1982, he was a Pensioner on that date and was entitled to benefits coverage under the J&J Employer Plan as a pensioner effective April 1, 1982. The Complainant returned to work for Master Construction, in classified signatory employment, for two weeks, from June 5, 1983 to June 19, 1983.

J&J Trucking denies responsibility for providing the Complainant's benefits coverage and instead alleges that Consolidation Coal Company, Master Construction, or the 1974 Benefit Plan should be responsible for providing the Complainant's benefit coverage.

However, Consolidation Coal Company was not the Complainant's employer. Therefore, it is not responsible for the provision of benefits coverage for him and his eligible dependents. Furthermore, under Article II B (3), a Pensioner who returns to classified employment for another signatory Employer following his initial retirement must be employed by that Employer for at least three years in order for the responsibility for provision of benefits coverage to be shifted to such other Employer. Since the Complainant's period of employment with Master Construction was only two weeks, Master Construction is not responsible for his benefits coverage on such subsequent retirement.

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The question has also been raised whether the 1974 Benefit Plan may be responsible for provision of the Complainant's benefits coverage. In an administrative decision, the Funds determined that J&J Trucking does not satisfy the definition of "no longer in business" as contained in the 1974 Benefit Plan. Therefore, benefits coverage for the Complainant may not be provided by that Plan.

Article XX of the National Bituminous Coal Wage Agreement of 1981 requires signatory Employers to establish Employee Benefit Plans which are guaranteed at minimum levels for the terms of the Agreement, and are incorporated by reference therein. Although the insurance policy purchased by the Employer provides a lesser level of benefits than that required by the Agreement, this does not relieve the Employer of its obligation to provide a level of benefits consistent with the terms of the Agreement.

Accordingly, responsibility for providing benefits coverage for the Complainant is governed by the provisions of Article II B (2) of the standard Employer Benefit Plan. J&J Trucking, Inc. was obligated to provide benefits coverage for the Complainant as a Pensioner after his pension became effective on April 1, 1982. Although the Complainant was again employed in classified signatory employment by Master Construction from June 5, 1983 to June 19, 1983, he was not credited with at least three years of service for that period of employment. Therefore, his benefits coverage under J&J's Employer Plan should merely have been suspended for the period of such other employment. Consequently, J&J is responsible for the resumption of benefits coverage for the Complainant following termination of his period of employment with Master Construction.

Opinion of the Trustees

The Trustees are of the opinion that J&J Trucking, Inc. is responsible for the provision of benefits coverage for the Complainant as a Pensioner, and for his eligible dependents, from April 1, 1982, with the exception of the period from June 5 to June 19, 1983, when he was employed by Master Construction and his entitlement to benefits from J&J was suspended.