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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 81-536 February 25, 1985

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 as to which Employer is responsible for provision of benefits coverage for a Pensioner under the terms of the Employer Benefit Plan, and hereby render their opinion on the matter.

Background Facts

The Complainant was last employed by Banner Coal & Land Company, Inc. (Banner), a signatory Employer, from October 9, 1978 to December 15, 1978, when he became disabled. He applied for and received a Deferred Vested Pension on January 4, 1983, which was retroactive to February 1, 1982, and was based on 34 ¼ years of credited service.

Since February 1, 1982, Banner has refused to provide health benefits coverage to the Complainant, claiming that it is an independent contractor for Island Creek Coal Company and that a contractual agreement between them assigns liability for health benefits coverage to Island Creek.

Island Creek states that the Complainant was never its Employee and that all benefits questions should be referred to his last Employer, Banner Coal. Additionally, an Island Creek representative has stated that Island Creek merely acted as an intermediary between Banner Coal Company and the insurance carrier but accepted no responsibility for providing coverage to Banner's Employees.

Dispute

Whether Banner Coal & Land Company, Inc., Island Creek Coal Company or the 1974 Benefit Trust is responsible for the provision of benefits coverage to the Complainant.

Positions of the Parties

Position of Complainant: The Complainant has asked whether Banner Coal & Land Company, Island Creek Coal Company or the 1974 Benefit Trust is responsible for provision of his health benefits coverage as a Pensioner after February 1, 1982.

Position of Banner Coal & Land Co., Inc.: Banner maintains that it is an independent contractor of Island Creek Coal Company and that responsibility for provision of health benefits lies solely with Island Creek.

Position of Island Creek Coal Company: Island Creek states that Banner was the pensioner's last signatory Employer, and is responsible for the Complainant's health benefits coverage.

Pertinent Provisions

Article XX Section (c), (3)(i) and (3)(ii) of the National Bituminous Coal Wage Agreement of 1981 provides:

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.

(3)(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in signatory classified employment is no longer in business.

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 (coal 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 (1), (a) and (b) of the Employer 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.

#### Discussion

The Complainant has been receiving a Deferred Vested Pension under the 1974 Pension Plan, based on 34 ¼ years of credited service. In accordance with Articles I and II of the Employer Benefit Plan, he is eligible as a Pensioner to receive benefits coverage.

Article XX, Section (c) (3) (i) of the Wage Agreement requires each signatory Employer to establish and maintain an Employee benefit plan for pensioners whose last signatory classified employment was with such Employer. As the Complainant's last signatory Employer, Banner would be responsible for providing health and other non-pension benefits to the Complainant and his dependents. Although Banner maintains that a contractual agreement between it and Island Creek assigns liability for health benefits coverage to Island Creek, such contract would not relieve Banner of its responsibility to provide coverage to the Complainant under the Wage Agreement.

The Complainant also asked whether the 1974 Benefit Plan may be responsible for his benefits coverage. Article XX, Section (c)(3)(ii) of the Wage Agreement states that the Benefit Plan will provide benefits only to a retired miner who ceases to receive such benefits because his last

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signatory Employer is no longer in business. As the respondent has never maintained that it is out of business, this issue need not be addressed.

Opinion of the Trustees

Banner Coal & Land Company, Inc. is responsible for the provision of health benefits to the Complainant, as a Pensioner, and for his eligible dependents from February 1, 1982, the effective date of his 1974 Plan pension.