

OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 81-615 - August 25, 1986

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., 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 the provision of benefits for a Pensioner under the terms of the Employer Benefit Plan.

Background Facts

The Complainant last worked in classified signatory employment for the Respondent corporation on April 16, 1978. Full ownership and operating interest in the Respondent was transferred to the current owner/operator on November 12, 1981. The Complainant was notified by letter of March 9, 1984 that he was awarded a normal retirement pension under the UMWA 1974 Pension Plan, retroactive to January 1, 1983. The Complainant was advised to contact his last signatory employer, the Respondent, regarding his eligibility for health benefits coverage.

The Respondent was signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981, which expired on September 30, 1984. The current owner of the company has refused to provide health benefits for the Complainant. The current owner claims to have documents indicating that it did not assume any liability for the Complainant's health benefits coverage when ownership was transferred from the previous owner. No documents have been submitted to support this claim. The Respondent ceased operations in March 1984 and has not signed the 1984 Wage Agreement.

Dispute

Whether the Respondent is responsible for providing health benefits to Complainant as a 1974 Plan Pensioner.

Position of the Parties

Position of the Complainant: The Respondent is responsible for the provision of health benefits to Complainant.

Position of the Respondent: The Respondent, under current ownership, is not responsible for the provision of health benefits for the Complainants as a Pensioner. An agreement between the Respondent's current owners and the previous owners assigns liability for the Complainant's benefits coverage to the previous owners.

Pertinent Provisions

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

(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.

Article I (1), (2) and (5) of the Employer 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.
- (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:

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.

Discussion

Article XX(c)(3)(i) of the 1981 Wage Agreement requires a signatory employer to establish and maintain an employer benefit plan to provide health and other non-pension benefits for its pensioners whose last classified employment was with such employer. Although the Respondent corporation's shareholders sold their stock to new individuals pursuant to an agreement entered into on November 12, 1981, a change in the identity of stockholders does not affect the corporate existence nor the corporation's debts, obligations, or liabilities. Therefore the Respondent corporation remains liable for the health benefits coverage required by the Wage Agreement. The present stockholder maintains that an agreement was negotiated whereby the former stockholders assumed the Respondent corporation's health benefits obligations under the Wage Agreement. Such a side agreement between the Respondent and a third party, the former stockholder, cannot modify or abrogate the contractual rights of Respondent's employees against it as the primary obligor under the Wage Agreement. Inasmuch as the Complainant's last classified employment was with the Respondent corporation and the corporation was signatory to the 1981 Wage Agreement, the Respondent corporation was responsible for the Complainant's health benefits coverage during the term of the 1981 Wage Agreement.

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The issue is now whether the Respondent was contractually obligated to provide such coverage beyond the expiration of the 1981 Wage Agreement when the Respondent did not sign the 1984 Wage Agreement. The United States Court of Appeals for the Fourth Circuit, in Dist. 29, United Mine Workers of America, et. al. v. Royal Coal Co., 768 F. 2d 588, 592 (4th Cir. 1985) and Dist. 17, United Mine Workers of America, et. al. v. Allied Corp., etc., 765 F. 2d 412, 417 (4th Cir. 1985) (en banc), has ruled that an Employer's contractual obligation to provide health benefits to its pensioners does not extend beyond the expiration of the Wage Agreement.

Opinion of the Trustees

The Respondent corporation is responsible for providing health benefits to the Complainant from January 1, 1983 through the expiration of the 1981 Wage Agreement on September 30, 1984. Given the controlling language of the applicable Wage Agreement and Plan documents and in light of the Fourth Circuit's recent decisions, the Respondent is not responsible for providing health benefits to the Complainant following the expiration of the 1981 Wage Agreement.