
OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 81-632 - February 27, 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 health benefits coverage for pensioners under the terms of the Employer Benefit Plan.

Background Facts

The Complainants were employed at the Respondent's Lochgelly plant until May 1980 when they, along with the plant's other employees, were terminated. Just prior to this termination, the Respondent began operating a new facility nearby. Although a few Lochgelly employees were offered employment at the new facility, the Complainants were not. Each later worked for Summerlee Coal Processing ("Summerlee"), which leased the Lochgelly plant for an unspecified period of time between January and December 1981. Summerlee was signatory to the 1981 National Bituminous Coal Wage Agreement. After being terminated by Summerlee, the Complainants applied for and received UMWA 1974 Plan pensions, effective respectively in July and October 1982. By the time the Complainants retired, Summerlee was no longer in business, and the United Mine Workers of America 1974 Benefit Trust provided health benefits to the Complainants with the understanding that Summerlee was their last signatory employer.

Following the Complainants' termination by the Respondent in May 1980, the UMWA filed a class action grievance against the Respondent claiming that the employees terminated by the Respondent in May 1980, including the Complainants, should have been given panel rights and the right to transfer to the Respondent's new facility. The grievants sought "all wages, vacation float days, sick days and any other rights we have under the contract ... [as well as] panel rights and low earnings slips and our hospital cards." The grievance went to arbitration in October 1983, and the arbitrator determined that the terminated employees were entitled to "compensation for lost earnings, less compensation earned from other employment and less unemployment compensation received ... effective May 14, 1980 ..." The determination of the

particular amount due each aggrieved employee was left to the parties, though the arbitrator retained jurisdiction to settle any disputes. Pursuant to this continuing jurisdiction, the arbitrator determined in February 1984 that employees such as the Complainants who had retired subsequent to their discharge by the Respondent were entitled to lost compensation from May 1980 until the dates of their retirement. In May 1984, shortly after the arbitrator's supplemental decision, the UMWA, the Complainants and the Respondent reached a settlement. In exchange for lump sum payments of \$23,956.47 and \$22,203.67, respectively, each Complainant signed an identical agreement, entitled "Receipt and Release." The agreement was co-signed by representatives of UMWA District 29. It provided that the Respondent had "declined to pay any sums pursuant to Arbitrator Daily's" award but agreed to settle the Complainants' claims to avoid litigation by the UMWA.

The parties to the settlement agreed that the sums paid to the Complainants-

shall under no circumstances constitute or be construed to be wages, back pay, lost earnings, or any comparable form of compensation but rather is [sic] and shall hereafter be regarded for all purposes as a payment of damages and/or a penalty for alleged violation of contract, it being further understood and agreed that the undersigned performed absolutely no work or personal services in consideration of said payment.

In exchange for the money received by them, Complainants agreed to release Respondent from -

any and all grievances, actions, causes of action, claims or demands, whether sounding in tort, contract, or based on statute or otherwise, including but not limited to, any and all claims which the undersigned may have had as a result of his employment at the Lochgelly Preparation Plant No. 2, or as a result of the termination of the employment, or as a result of the denial of seniority or panel or transfer rights after such termination, or in any manner relating to the undersigned's seniority or panel or transfer rights under the National Bituminous Coal Wage Agreement of 1978, or in any manner relating to the aforesaid class action grievance or Case No. 81-29-83-413.

The release further stated that -

The Undersigned [Complainant] hereby acknowledges and assumes all risk, chance, hazard that the loss sustained by the Undersigned may be greater or more extensive than is now known, anticipated or expected.

The two Complainants filed similar Resolution of Dispute Requests with the Trustees stating that they had sought and been denied health benefits by the Respondent. They contend that, as a result of the arbitrator's award of "backpay" covering the period just prior to their retirement, the Respondent is their "last signatory employer" and thus required to provide them with health benefits.

Dispute

Is the Respondent responsible for the provision of health benefits to the Complainants as 1974 Plan pensioners?

Position of the Parties

Position of the Complainants: The Respondent was the Complainants' last signatory employer and is thus responsible for the provision of health benefits, notwithstanding the Receipt and Release executed by the parties.

Position of the Respondent: The Respondent is not the last signatory employer of the Complainants and is thus not responsible for their health benefits upon retirement. Moreover, the Complainants are estopped from asserting a right to health benefits as all claims arising out of the Lochgelly Plant sale were waived in the settlement agreements.

Pertinent Provisions

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

Article XX Health and Retirement Benefits

(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.

Article XX. (e)(6) of the 1981 National Bituminous Coal Wage Agreement states:

(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 of the Employer Benefit Plan states in part:

The following terms shall have the meanings herein set forth:

- (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 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.

Article I. A. (12) of the UMWA 1974 Pension Plan provides in pertinent part:

Article I - INTRODUCTION

A. Definition

- (12) "Hours Worked" shall mean (a) each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Employer during the calendar year, and (b) hours for which back pay, irrespective of mitigation of damages, is awarded or agreed to by an Employer, to the extent that such award or agreement is intended to compensate

an Employee for periods which the Employee would have been engaged in a performance of duties for the Employer....

Discussion

Article XX (c) (3) (i) of the Wage Agreement requires each signatory Employer to establish and maintain an Employee benefit plan to provide health and other non-pension benefits for "... its Employees covered by the Agreement as well as pensioners under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer ...~ Articles I (5) and II B (1) of the Employer Benefit Plan respectively define the term Pensioner and the requirements under which a pensioner who is not again employed subsequent to his initial retirement may qualify for such benefits coverage from the Employer for whom he performed his last classified signatory employment.

Both Complainants are receiving 1974 Plan pensions, other than deferred vested pensions based on less than twenty years of credited service, and therefore meet the definition of "Pensioner" contained in Article I (5) of the Employer Plan. The Respondent contends, however, that it is not the Complainants' last signatory Employer and is not responsible for providing their benefits coverage.

Although the record shows that the Complainants last performed classified work for Summerlee, it is also clear that the arbitrator's awards of October 21, 1983 and February 28, 1984 provided for compensation for lost earnings (backpay) for a period following the termination of such employment with Summerlee through the effective date of their UMWA pensions.

The question of whether a back pay award should be considered in determining hours worked for an Employer has previously been considered by the Trustees in ROD 81-422. In their decision the Trustees concluded 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. Accordingly, because the arbitrator's award provided for back pay for the period immediately preceding the Complainants' pension effective dates, the respondent must be considered their last signatory employer.

The Respondent has also contended that regardless of the arbitrator's award, it should have no bearing on the outcome of this dispute because each of the Complainants voluntarily executed a settlement agreement with the Respondent releasing it from any further obligations resulting from the sale of the Lochgelly Preparation Plant. Therefore, the Respondent claims, it is not responsible for providing any further benefits. Nevertheless, under Article XX, section (e) (6) of the Wage Agreement, resolution of disputes concerning issues pertaining to Article XX is delegated to the exclusive authority of the Trustees and is not subject to the Settlement of Disputes provision contained in Article XXIII. Accordingly, the Trustees are not bound by decisions reached pursuant to that procedure. Instead they must review such disputes in accordance with the terms of the Employer Benefit Plan.

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Consequently, because the Complainants meet the definition of a pensioner under the Plan, and the Respondent was their last signatory Employer, the Respondent is responsible for the provision of benefits coverage from the dates their pensions under the 1974 Pension Plan became effective.

Opinion of the Trustees

The Respondent is responsible for the provision of health benefits coverage for the Complainants.