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OPINION OF THE TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 81-666 - September 30, 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 a Pensioner under the terms of the Employer Benefit Plan.

Background

The Complainant last worked in a classified position for the Respondent on December 7, 1981, when he was injured in a mine accident. The Respondent was signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981, which expired on September 30, 1984. The Complainant was unable to return to work, and on May 2, 1985 he was awarded a 1974 Pension Plan minimum disability pension effective January 1, 1984.

According to Funds' records, the Respondent ceased operations on September 27, 1984 and terminated health benefits coverage for its employees on October 1, 1984. Funds' records also indicate that the stock of the company was sold to the present owner on or around June 5, 1985, and the company resumed operations under the same name on June 17, 1985. The Respondent, under its present ownership, signed the 1984 Wage Agreement on June 14, 1985.

The Complainant has stated that the Respondent, under present ownership, has refused to provide his health benefits coverage. The Complainant asks whether the present or the previous owner of the Respondent corporation is responsible for providing his health benefits coverage.

Counsel for the present owner has stated that the Respondent has no resources to provide health benefits for retired or disabled employees of the previous owner. Counsel has also questioned the Complainant's disability.

Dispute

Whether the present owner or the previous owner of the Respondent corporation is responsible for providing health benefits coverage for the Complainant.

#### Positions of the Parties

Position of the Complainant: The Complainant asks whether the previous owner or the present owner of the Respondent corporation is responsible for providing his health benefits coverage as a Pensioner under the 1974 Pension Plan.

Position of the Respondent: Counsel for the Respondent states that the present owner of the Respondent corporation has no resources to provide health benefits for retired or disabled employees of the previous owner.

#### Pertinent Provisions

Article XX(c)(3)(i) of the National Bituminous Coal Wage Agreements of 1981 and 1984 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 1981 and 1984 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 [1984], 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.  
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 [October 1, 1984], 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 and 1984 Wage Agreements 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. The benefits provided pursuant to such plans are guaranteed during the terms of the respective Agreements. Inasmuch as the Complainant is a Pensioner whose last classified employment was with the Respondent corporation, the Respondent corporation is responsible for the Complainant's benefits coverage from January 1, 1984, the effective date of his pension, through September 30, 1984, the expiration of the 1981 Wage Agreement.

Although the stock of the Respondent corporation was sold to the present owner on or around June 5, 1985, a change in the identity of stockholders does not affect the corporate existence nor the corporation's debts, obligations or liabilities. Inasmuch as the Respondent became signatory to the 1984 Wage Agreement on June 14, 1985, the Respondent corporation resumed its responsibility to provide the Complainant's benefits coverage from that date. Although the present owner has stated that it does not have the resources to provide health benefits to retired and disabled employees of the previous owner, such claim does not discharge the Respondent corporation of its obligation to provide coverage to the Complainant under the terms of the Wage Agreements.

The Respondent has also questioned the Complainant's disability and, thereby his entitlement to health benefits coverage. The Complainant was determined to be disabled by the Trustees of the 1974 Pension Plan and thus entitled to a 1974 Plan pension. Entitlement to health benefits coverage under Article II of the Employer Benefit Plan is based upon status as a 1974 Plan pensioner and not upon an employer's determination of disability.

#### Opinion of the Trustees

The Respondent is responsible for providing health benefits to the Complainant from January 1, 1984 until the expiration of the 1981 Wage Agreement on September 30, 1984. The Respondent's obligation to provide health benefits to the Complainant resumed on June 14, 1985 when it became signatory to the 1984 Wage Agreement.