
OPINION OF TRUSTEES

In Re

Complainants: Laid-off Employees
Respondent: Employer
ROD Case No: 84-146 - August 25, 1987

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 coverage for laid-off Employees under the terms of the Employer Benefit Plan.

Background Facts

The Complainants were employed in classified positions by the Respondent, Caryco Mining, Ltd. ("Caryco"), until August 23, 1985, when they were laid off. The Respondent operated the mine where the Complainants worked under a contract with Chafin Coal Company. The Complainants claim that based on their hours worked during the 24-month period prior to August 23, 1985, they were entitled to continued health benefits coverage for the balance of the month plus twelve months from the date last worked. Funds' records indicate that each of the Complainants had worked more than 500 but less than 2,000 hours for the Respondent during the 24-month period immediately prior to his date last worked; the Complainants worked additional hours for other contractors of Chafin Coal Company during that period.

The Complainants accepted classified employment with Spring Lick Coal, Inc. ("Spring Lick") on November 5, 1985. One of the Complainants has stated that the owner of Spring Lick advised them to notify the Respondent that they had accepted temporary employment so that their continued benefits coverage would be suspended for the duration of such employment and then reinstated following the expiration of their eligibility for benefits from Spring Lick. The Complainants have submitted evidence that the Respondent was notified, by letter dated November 19, 1985, that the Complainants had accepted employment with Spring Lick. On December 20, 1985, the Complainants were laid off by Spring Lick. Funds' records indicate that each of the Complainants worked less than 500 hours for Spring Lick and that Spring Lick provided continued benefits coverage for the Complainants until February 1, 1986.

Following the layoff by Spring Lick, the Complainants contacted the Respondent and requested that their continued benefits coverage be reinstated. On January 17, 1986, the Respondent notified the Complainants that their benefits coverage had been permanently terminated because

they failed to notify the Respondent of their employment with Spring Lick within 10 days by certified mail as required under the terms of the Employer Benefit Plan.

The Complainants claim that at the time they accepted employment with Spring Lick they were unaware of the Plan requirement to provide notice of other employment. The Complainants have stated that during their employment with the Respondent they never received summary plan descriptions of the benefit plans established by the Respondent. The Complainants claim that it was the owner of Spring Lick who first informed them that, if they notified the Respondent of their temporary employment with Spring Lick, their continued coverage from the Respondent could be reinstated thereafter.

The Respondent maintains that the Complainants are not entitled to any additional periods of continued coverage because they did not notify the Respondent of their acceptance of other employment within the 10-day period stipulated under Article III D. (1)(f) of the Employer Benefit Plan. The Respondent has stated that it provided benefits coverage for the Complainants through its insurance carrier, consistent with the terms of the Employer Benefit Plan, and that summary plan descriptions of the coverage provided through the insurance carrier were made available to its Employees in May 1985.

The Respondent submitted a summary plan description to the Funds as evidence in support of its position. Upon review, Funds' staff determined that the booklet did not contain the provisions of Article III D. (1)(f) of the Employer Benefit Plan. In response to a request for additional evidence that the relevant provisions were in effect, the Respondent submitted a single, undated page on which the provisions of Article III D. (1)(f) were printed along with a statement that such page "should be attached and become a part of your group contract under Termination of Coverage due to Temporary Lay-Off." The Respondent claims that page had been forwarded to the Personnel Director for distribution with the summary plan descriptions. The Respondent has stated that there are no company records to substantiate the date of such distribution and that the method of distribution is unknown because the personnel involved are no longer with the company. The Respondent has stated that it can only assume that booklets containing the attachment were distributed by hand to the Employees. The Respondent has not responded to a subsequent request for a sworn affidavit in support of its position that the materials in question were distributed to the Complainants.

Dispute

Is the Respondent responsible for reinstating the Complainants' continued benefits coverage for the remainder of their individual periods of eligibility beyond February 1, 1986?

Positions of the Parties

Position of the Complainants: The Respondent did not inform the Complainants of their specific obligations under Article III D. (1)(f), and, therefore, the Respondent is responsible for

reinstating the Complainants' continued health benefits coverage for the remainder of their individual periods of eligibility.

Position of the Respondent: Summaries of the benefit plan established by the Respondent, consistent with the terms of the Plan required by the Wage Agreement, were made available to all Employees. The Complainants failed to notify the Respondent of their acceptance of employment with Spring Lick within 10 days, as required under Article III. D. (1) (f) of the Employer Benefit Plan. Therefore, the Complainants' continued benefits coverage was permanently terminated and the Respondent is not responsible for providing any additional periods of continued benefits coverage for the Complainants.

Pertinent Provisions

Article I (1), (2) and (4) of the Employer Benefit Plan provide:

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (name of Coal Company).
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1984, as amended from time to time and any successor agreement.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

Article II. A. (1) and (4) of the Employer Benefit Plan provide:

Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

- (1) is actively at work* for the Employer on the effective date of the Wage Agreement; or ...
 - (4) A new Employee will be eligible for health benefits from the first day worked with the Employer.
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*"Actively at work" includes an Employee of the Employer who was actively at work on September 30, 1984, and who returns to active work with the Employer two weeks after the effective date of the Wage Agreement.

Article III D. (1) (a) and (f) of the Employer Benefit Plan provide:

Article III - Benefits

D. General Provisions

(1) Continuation of Coverage

(a) Layoff

If an Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment insurance coverage is as follows:

Number of Hours Worked for the
Employer in the 24 Consecutive
Calendar Month Period Immediately
Prior to the Employee's Date
Last Worked

Period of Coverage Continuation
from the Date Last Worked

2,000 or more hours

Balance of month plus 12 months

500 or more but less than
2,000 hours

Balance of month plus 6 months

Less than 500 hours

30 days

(f) Other Employment

Notwithstanding the foregoing, in the event an Employee accepts employment during a period of continued coverage under paragraph (a), health, life and accidental death and dismemberment coverage will terminate as of the date of such employment. If, however, such employment subsequently terminates prior to the date the Employee's coverage under paragraph (a) otherwise terminates, such Employee's health, life and accidental death and dismemberment coverage will be reinstated following the later of (i) termination of such employment or (ii) any continued health coverage resulting therefrom, and will continue to the date such coverage under paragraph (a) would have otherwise terminated. It is the obligation of the Employee to notify the Employer within 10 days by certified mail of both the acceptance and termination of such employment; failure to provide such notice will result in permanent termination of coverage. Nothing

in this paragraph shall extend coverage beyond the date determined pursuant to paragraph (a).

Discussion

Article III D. (1) (a) of the Employer Benefit Plan provides continued benefits coverage for a laid-off Employee based upon the number of hours worked for the Employer during the 24-month period prior to the date last worked. In the event a laid-off Employee accepts other employment during a period of continued coverage, Article III D. (1)(f) requires the Employee to notify the Employer, within 10 days, by certified mail, of both the acceptance and termination of such employment. If such employment terminates prior to the date the period of continued coverage under paragraph (a) would otherwise terminate and proper notice has been provided, continued coverage shall be reinstated for the duration of the period set forth in paragraph (a). Failure to provide notice in accordance with Article III D. (1)(f) results in permanent termination of coverage as of the date a laid-off Employee accepts other employment.

The Complainants in the instant case claim that based on their hours worked they are entitled to continued benefits coverage for the balance of the month in which they last worked plus twelve months. Funds' records indicate that each of the Complainants worked more than 500 but less than 2,000 hours for the Respondent in the 24-month period prior to his date last worked. Although the Complainants worked additional hours for other independent contractors of Chafin Coal Company during the 24-month period prior to the date last worked for the Respondent, the Trustees have previously concluded in Resolutions of Dispute 81-338 and 81-621 (copies enclosed herein), that an Employer is not responsible for providing continued coverage for a laid-off Employee based on hours worked for a separate Employer. Accordingly, under Article III D. (1)(a), the Complainants are entitled to continued benefits coverage for the balance of the month plus six months from the date last worked.

The Complainants accepted temporary employment with Spring Lick Coal, Inc. on November 5, 1985. The issue now is whether the Respondent is responsible for reinstating the Complainants' continued coverage following February 1, 1986, when their coverage from Spring Lick was terminated. The Complainants claim that they never received a copy of the Employer Benefit Plan during their employment with the Respondent. The Complainants have stated that they notified the Respondent of their employment with Spring Lick after the 10-day period stipulated under Article III D. (1)(f) based on information obtained from other sources. The Respondent contends that summary plan descriptions of the benefits provided through the insurance carrier were distributed or made available to each of its Employees; however, the copy submitted to the Funds by the Respondent does not contain the notification requirement of Article III D. (1)(f). Although the Respondent later submitted a single loose page containing the relevant provision, the loose page is undated and includes no specific reference to the Respondent's plan. Despite several requests from Funds' staff, the Respondent has been unable to provide any documentary evidence which would establish that the alleged attachment was an addendum to the group

contract maintained through the insurance carrier and that such addendum had been distributed to the Complainants.

Section 104. (b)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) requires that covered employers furnish to each beneficiary receiving benefits under a covered plan, a copy of the summary plan description. Section 102. (b) specifies that such a summary plan description shall contain information concerning the circumstances which may result in disqualification, ineligibility, or denial or loss of benefits.

In ROD 81-537, involving a similar issue wherein the employee also claimed lack of knowledge of the notice requirement of Article III D. (1)(f), the Trustees denied the requested coverage. There, however, unlike the present circumstances, the Trustees found that the evidence supported the employer's contention that there had been adequate communication of the Plan's provision on notice.

Here, given the Complainants' statements, and the lack of evidence to substantiate the Respondent's position, the Trustees are compelled to reach the conclusion that the Complainants had done everything possible to comply with the relevant provision of the Employer Benefit Plan. The Respondent is thus responsible for providing continued benefits coverage for the Complainants for the remainder of their individual periods of eligibility beyond February 1, 1986.

Opinion of the Trustees

The Respondent is responsible for providing continued benefits coverage for the Complainants for the remainder of their individual periods of eligibility beyond February 1, 1986, as determined under the terms of the Employer Benefit Plan.