
OPINION OF TRUSTEES

In Re

Complainant: Laid-off Employee
Respondent: Employer
ROD Case No: 84-273 - January 27, 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 a laid-off Employee under the terms of the Employer Benefit Plan.

Background Facts

The Complainant was employed in a classified position by the Respondent from June 1984 through April 8, 1986, when he was laid off. During the 24-month period preceding April 8, 1986, the Complainant worked 1,138 hours for the Respondent. The Respondent provided the Complainant with health benefits coverage through April 30, 1986 and terminated all coverage after that date.

The Respondent claims that the Complainant accepted work with another coal hauling company, G&R Trucking Company ("G&R") subsequent to his layoff on April 8, 1986. The Respondent contends that under Article III (D)(1)(f) of the Employer Benefit Plan the Complainant was required to notify the Respondent by certified mail within 10 days of acceptance of such employment. The Respondent claims that the Complainant's failure to give notice of his employment with G&R resulted in the termination of the Complainant's health benefits coverage. In support of its claim that the Complainant worked for G&R subsequent to his layoff, the Respondent has submitted a signed statement by another laid-off Employee of the Respondent ("Co-worker"), in which the Co-worker claims that he saw the Complainant hauling coal for G&R on or about the middle part of April 1986.

The Complainant claims that he worked for G&R Trucking Company for approximately five days prior to April 8, 1986 and did not work for G&R after that date. In support of his claim, the Complainant has submitted two (2) checks from G&R Trucking Company dated March 23, 1986 and April 14, 1986. The Complainant claims that these represent his entire compensation from G&R and that he was customarily paid 2 to 3 weeks after he performed work. The Complainant has also submitted a copy of The West Virginia Department of Employment

Security's determination, with a claim date of April 13, 1986, indicating that no dispute of his eligibility for unemployment compensation was raised.

In a telephone conversation with Funds' staff, the President of G&R Trucking Company stated that G&R does not have records of the dates of the Complainant's employment, but that she recalls that the Complainant was employed by G&R for approximately 2 days. The President of G&R stated that while the Complainant worked for G&R he continued to work full-time for another Employer. She has also stated that G&R paid the Complainant on two occasions, and that it is G&R's policy to delay payment of Employees' wages for a period of 2 to 4 weeks.

The Complainant stated that he began working for another trucking company on September 8, 1986.

Dispute

Whether the Respondent is responsible for providing the Complainant with continued health benefits coverage after April 30, 1986.

Positions of the Parties

Position of the Complainant: The Respondent is responsible for providing the Complainant with continued health benefits coverage after April 30, 1986.

Position of the Respondent: The Complainant accepted employment with another Employer on or about the middle of April 1986, subsequent to the date he was laid off by the Respondent. The Complainant's failure to notify the Respondent of such employment properly resulted in the termination of his continued health benefits coverage.

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 (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) of the Employer Benefit Plan provides:

Article II - Eligibility

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

A. Active Employees

Benefits under Article III shall be provided to any Employee who:

- (1) is actively at work* for the Employer on 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 a layoff, continuation of health, life and accidental death and dismemberment insurance coverage is as follows:

<u>Number of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to The Employee's Date Last Worked</u>	<u>Period of Coverage Continuation from the Date Last Worked</u>
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

*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.

(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 insurance 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 insurance 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 that the continuation of health benefits coverage for a laid-off Employee is based upon the number of hours worked by the Employee during the 24 consecutive calendar month period immediately prior to the Employee's last day worked. Inasmuch as the Complainant worked 1,138 hours for the Respondent during the 24-month period prior to his last day worked, April 8, 1986, he was eligible for health benefits coverage under Article III D.(1)(a) through October 1986.

Under Article III D.(1)(f) of the Employer Benefit Plan, an Employee who accepts other employment subsequent to layoff is obligated to notify the Employer within 10 days by certified mail of both the acceptance and termination of such employment. Failure to provide the required notice results in permanent termination of continued coverage.

The Respondent claims that the Complainant worked for G&R Trucking Company subsequent to his layoff on April 8, 1986. The Respondent has provided a statement signed by a co-worker indicating that he saw the Complainant hauling coal for G&R on or about the middle of April 1986. In a telephone conversation with Funds' staff, the Respondent's representative has indicated that he cannot confirm the dates of the Complainant's employment with G&R. Indeed, the signed statement submitted by the co-worker fails to indicate if the Complainant was seen hauling coal for G&R subsequent to April 8, 1986.

The Complainant claims that he did not work for G&R Trucking Company subsequent to April 8, 1986. In support of his claim, he has submitted paychecks from G&R indicating he was paid on March 23, 1986 and April 14, 1986. The President of G&R confirmed that the Complainant was only paid on two occasions by G&R, and that payment was for work performed 2 to 4 weeks prior to the date of payment. The President of G&R also stated that during the period when the

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Complainant was working for G&R, the Complainant continued full-time employment with another company.

Based on the information provided, it is reasonable to conclude that the Complainant did not work for G&R subsequent to his date of layoff, April 8, 1986. Therefore, the Respondent is responsible for providing the Complainant with continued coverage under Article III D.(1)(a) beyond April 30, 1986.

The Complainant began working for another trucking company on September 8, 1986, and did not provide the required notice of such employment to the Respondent. Under Article III D.(1)(f), the Complainant's failure to provide notice of his employment to the Respondent resulted in the termination of his continued coverage as of the date of such employment. Therefore, the Respondent is responsible for the provision of continued health benefits coverage for the Complainant from April 30, 1986 until September 8, 1986.

Opinion of the Trustees

The Respondent is responsible for providing the Complainant's continued health benefits coverage from April 30, 1986 until September 8, 1986.