

OPINION OF TRUSTEES

In Re

Complainant: Laid-off Employee
Respondent: Employer
ROD Case No: 84-327 - March 3, 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 health benefits coverage under the terms of the Employer Benefit Plan.

Background Facts

The Complainant was employed in a classified position by Krest Coal Company, a signatory corporation, from March 1984 through May 7, 1986. Funds' records indicate that the Complainant worked 3,738 hours for Krest Coal Company between June 1984 and March 1986. No-hours were reported to the Funds by Krest Coal Company after March 1986. The Funds has obtained information indicating that on May 7, 1986 Heather-Krest Coal Company, Inc. ("Heather-Krest") was formed as a result of the merger of two corporations, Krest Coal Company and Heather Coal Company. The Complainant worked for Heather-Krest, the Respondent, from May 8, 1986 until June 23, 1986, when he was laid off. No hours were reported to the Funds by the Respondent for this

During his employment with Krest Coal Company and Heather-Krest, the Complainant was provided health benefits coverage under an 80/20 Blue Cross/Blue Shield benefit plan until May 20, 1986, when all coverage ceased. The Complainant has submitted copies of unpaid bills for medical expenses incurred by the Complainant and his eligible dependents between March 29, 1984 and May 22, 1986. The Complainant asks that the Respondent be found responsible for the provision of health benefits coverage during his period of eligibility at the level prescribed by the Employer Benefit Plan.

In a civil action filed by the Union on behalf of the Employees of Heather-Krest, the United States District Court for the Western District of Virginia ruled that Heather-Krest is bound by the terms of the 1984 Wage Agreement.

Dispute

Whether the Respondent is responsible for the provision of health benefits coverage during the Complainant's period of eligibility at the level prescribed by the Employer Benefit Plan.

Positions of the Parties

Position of the Complainant: The Respondent is responsible during the Complainant's period of eligibility for the provision of health benefits coverage for the Complainant and his eligible dependents at the level prescribed by the Employer Benefit Plan.

Position of the Respondent: The Respondent has not responded to repeated correspondence by Funds' staff requesting its position in this dispute.

Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1984 provides in pertinent part:

(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 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) 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:

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; or
- (4) A new Employee will be eligible for health benefits from the first day worked with the Employer.

Article III D. (1) (a) of the Employer Benefit Plan provides:

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:

<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

*Active by 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.

Discussion

Article XX Section (c)(3)(i) of the 1984 Wage Agreement requires each signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits to its Employees. The Wage Agreement stipulates that benefits provided by the Employer pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Article II A. of the Employer Benefit Plan provides health benefits for an active Employee working in a classified job for a signatory Employer. In addition, Article III. D. (1) (a) of the Employer Benefit Plan provides for continued benefits coverage for an Employee who ceases work because of layoff. Under the provisions of Article III D. (1)(a), an Employee's eligibility for continuation of coverage is based on the total number of hours worked for the Employer during the 24-calendar month period prior to his last date worked.

Inasmuch as the Complainant was an active Employee of Krest Coal Company through May 7, 1986, Krest Coal Company was responsible for the provision of his health benefits coverage through that date. On or about May 7, 1986, Heather Coal Company and Krest Coal Company merged to form Heather-Krest Coal Company, the Respondent. Inasmuch as the Complainant was an active Employee of the Respondent until June 23, 1986, the Respondent was responsible for the provision of health benefits coverage for the Complainant through that date. Under Virginia's Corporation law, upon merger, the separate existence of each merged corporation ceases. The resulting corporation assumes all liabilities of each corporation party to the merger. Therefore, Heather-Krest, as the resulting corporation, must provide to the Complainant those benefits for which Krest Coal Company was responsible.

Inasmuch as the Complainant was laid off by the Respondent on June 23, 1986, he is also entitled to continued health benefits coverage based on his hours worked for his Employer in the 24-month period prior to his date last worked. Because Krest Coal Company was merged into Heather-Krest, which assumed all of its obligations, Krest Coal Company and Heather-Krest may be considered one employer for purposes of the continuation of coverage provisions of the Plan. Therefore, the Complainant is entitled to continued coverage based upon his hours worked with Heather-Krest and with Krest Coal Company. The Complainant worked over 2,000 hours for Heather-Krest and Krest Coal Company in the 24 month period prior to June 23, 1986 and he is thus entitled to continued coverage from Heather-Krest through June 30, 1987.

The Complainant was provided health benefits under an 80/20 health plan through May 20, 1986. As a result of this 80/20 coverage, the Complainant has unpaid medical bills for services rendered during this period. The use of such a plan by both Krest Coal Company and the Respondent is inconsistent with the provisions of the 1984 Wage Agreement and the Employer Benefit Plan. The levels of benefits to be provided to Employees, Pensioners and their dependents and survivors are established through collective bargaining and may not be unilaterally changed by an Employer.

Opinion of Trustees
Resolution of Dispute
Case No. 84-327
Page 5

The Respondent is responsible for the provision of health benefits for the Complainant at the level specified in the Employer Benefit Plan from March 1984 through June 30, 1987.