

OPINION OF TRUSTEES

In Re

Complainants: Pensioners
Respondent: Employer
ROD Case No: 84-372 - June 18, 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 health benefits coverage for Pensioners under the terms of the Employer Benefit Plan.

Background Facts

The Complainants are Pensioners whose last signatory classified employment was with the Respondent, Kitchekan Fuel Corporation. The Respondent ceased operations and laid off all its Employees in January 1983. The Respondent was signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981, which expired on September 30, 1984. The Respondent did not sign the 1984 Wage Agreement and it terminated health benefits coverage for the Complainants on August 31, 1986.

Funds' records indicate that shares of the Respondent corporation's stock were purchased by Gilbert Imported Hardwoods, Inc. (GIH) in January 1983. The representative for the Complainants asks whether the Respondent, or GIH, or the UMWA 1974 Benefit Plan and Trust is responsible for providing health benefits coverage for the Complainants.

The Respondent contends that its obligation to provide health benefits coverage for the Complainants ceased upon expiration of the 1981 Wage Agreement. The Respondent has stated that, furthermore, it is no longer in business and it is financially unable to provide health benefits coverage for the Complainants.

According to a statement submitted by GIH, GIH is only one of the shareholders of the Respondent. GIH maintains that although it is signatory to the 1984 Wage Agreement, under that Agreement, it is only responsible for providing health benefits coverage to pensioners whose last signatory classified employment was with GIH. GIH has stated that inasmuch as the Complainants were never employed by GIH, it has no obligation to provide their health benefits coverage.

Dispute

Whether Kitchekan Fuel Corporation, GIH, or the UMWA 1974 Benefit Plan and Trust is responsible for providing health benefits coverage to the Complainants following the expiration of the 1981 Wage Agreement.

Positions of the Parties

Position of the Complainants: The representative for the Complainants asks who is responsible for providing their health benefits coverage - Kitchekan Fuel Corporation (the Respondent), GIH, or the UMWA 1974 Benefit Plan and Trust.

Position of the Respondent: The Respondent is no longer in business and is not responsible for the provision of health benefits coverage for the Complainants beyond the expiration of the 1981 Wage Agreement.

Pertinent Provisions

Article XX(c)(3)(i) of the National Bituminous Coal Wage Agreements of 1981 and 1984 provides in pertinent part:

(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... 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 Employer Benefit Plan provide:

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (Employer's name).

- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1981, 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.

Article II B. (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:

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.

Discussion

Article XX (c)(3)(i) of the 1981 Wage Agreement 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. Although shares of the Respondent corporation's stock were sold to Gilbert Imported Hardwoods in January 1983, a change in the identity of stockholders does not affect the corporate existence nor the corporation's debts, obligations, or liabilities. Therefore, the Respondent remained liable for the health benefits coverage required by the Wage Agreement. Inasmuch as the Complainants' last classified employment was with the Respondent corporation and the corporation was signatory to

the 1981 Wage Agreement, the Respondent corporation was responsible for the Complainants' health benefits coverage during the term of the 1981 Wage Agreement.

The issue is now whether the Respondent is contractually obligated to provide such coverage beyond the expiration of the 1981 Wage Agreement when the Respondent did not sign the 1984 Wage Agreement. The United States Court of Appeals for the Fourth Circuit, in Dist. 29 United Mine Workers of America, et al. v. Royal Co., 768 F. 2d 588, 592 (4th Cir. 1985) and Dist. 17, United Mine Workers of America, et al., v. Allied Corp., etc., 765 F. 2d 412, 417 (4th Cir. 1985) (en banc), has ruled that an Employer's contractual obligation to provide health benefits to its Pensioners does not extend beyond the expiration of the Wage Agreement. Inasmuch as the Respondent is not signatory to the 1984 Wage Agreement, it is not responsible for providing health benefits coverage for the Complainants beyond the expiration of the 1981 Wage Agreement.

The Respondent corporation was clearly established prior to the purchase of its stock by GIH, and the Respondent's corporate identity did not change as a result of such stock purchase. Absent any evidence to the contrary, the Trustees must conclude that GIH and the Respondent are separate companies. Therefore, although GIH is signatory to the 1984 Wage Agreement, it is not responsible for providing health benefits coverage to the Complainants whose last classified employment was with the Respondent.

The Complainants have also asked in the alternative whether coverage might be provided under the 1974 Benefit Plan and Trust. Under that Plan, a beneficiary is entitled to coverage only if it is determined that the beneficiary's last Employer is "no longer in business." Such determination is made by the Trustees under established procedures separate from the ROD procedure.

Opinion of the Trustees

Under the controlling language of the applicable Wage Agreements and Plan documents and in light of the Fourth Circuit's decisions, neither the Respondent nor Gilbert Imported Hardwoods, Inc. is responsible for providing health benefits to the Complainants following the expiration of the 1981 Wage Agreement.