
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 84-443 - December 17, 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 a Pensioner under the terms of the Employer Benefit Plan.

Background Facts

The Complainant's last classified signatory employment in the coal industry was with the Respondent on July 12, 1985. On August 22, 1985, the Complainant was awarded a UMWA 1974 Pension Plan Age 55 retirement pension, effective August 1, 1985. The Complainant was advised by letter to contact his last signatory employer, the Respondent, regarding his eligibility for health benefits coverage as a Pensioner. The Respondent was provided a copy of that letter.

The representative for the Complainant states that inasmuch as the Respondent is the Complainant's last signatory Employer, the Respondent is responsible for providing the Complainant with health benefits coverage as a Pensioner.

The Respondent has refused to provide health benefits coverage for the Complainant. The Respondent alleges that the Complainant was employed with the Respondent for approximately one month and thereafter was employed by Nello-Teer of Durham, North Carolina, a road construction company. In addition, the Respondent states that it has ceased operations.

Dispute

Whether the Respondent is responsible for providing health benefits coverage for the Complainant as a Pensioner.

Positions of the Parties

Position of the Complainant: The Respondent is responsible for providing health benefits coverage for the Complainant as a Pensioner.

Position of the Respondent: The Complainant was employed with the Respondent for approximately one month and thereafter was employed elsewhere; therefore, the Respondent is not responsible for providing the Complainant's health benefits coverage. In addition, the Respondent indicates that it has ceased operations.

Pertinent Provisions

Article XX(c)(3)(i) of the National Bituminous Coal Wage Agreement of 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 benefit 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 (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 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.

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

Article II - Eligibility

The persons eligible to receive 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) 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.
- (4) Health benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least \$500 per month.

Discussion

Article XX(c)(3)(i) of the 1984 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 signatory classified employment was with such Employer. The Wage Agreement stipulates that benefits provided by the Employer pursuant to such Plan shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such Plan.

Article II B. (1) of the Employer Benefit Plan establishes that an individual who is receiving a pension under the 1974 Pension Plan, other than a deferred vested pension based on less than twenty (20) years of credited service or a pension based in whole or in part on years of service credited under Article II 6. of the 1974 Plan, is eligible for health benefits coverage under the Employer Benefit Plan. Article II B. (4) of the Plan stipulates that health benefits shall not be provided during any month in which a Pensioner is regularly employed with earnings equivalent to at least \$500 per month. Inasmuch as the Complainant was awarded a UMW 1974 Pension

Plan Age 55 retirement pension effective August 1, 1985, the Complainant meets the eligibility requirements of Article II B (I) and is entitled to health benefits coverage from his last signatory

employer, subject to the earnings limitation set forth in Article II B. (4). Although the Respondent states that the Complainant was employed with another company subsequent to his employment with the Respondent, such employment was with a road construction company, Nello-Teer of Durham, North Carolina. Accordingly, any duties the Complainant performed in the course of such employment may not be considered classified work for a signatory Employer. Therefore, the Respondent is the last signatory Employer for which the Complainant performed classified work.

The Respondent has also claimed that it is not responsible for providing health benefits coverage for the Complainant because the Complainant was employed by the Respondent for only one month. This claim notwithstanding, Funds' records indicate that the Complainant was employed by the Respondent from September 11, 1984 through July 12, 1985. Moreover, under the terms of the Employer Benefit Plan, an Employer's obligation to provide benefits for its Pensioners is not contingent upon any minimum length of service requirements. Inasmuch as the Complainant meets the eligibility requirements of Article II B. (1) of the Plan, he is entitled to health benefits coverage from his last signatory Employer, the Respondent, subject to the earnings limitation set forth in Article II B. (4) of the Plan.

The Respondent's claim that it has ceased operations does not relieve it of its obligation to provide health benefits coverage under the Wage Agreement. A Pensioner may be eligible for coverage under the 1974 Benefit Plan and Trust only if it is determined that his last signatory 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

The Respondent is responsible for providing health benefits coverage for the Complainant as a Pensioner, effective August 1, 1985, consistent with the Employer Benefit Plan, including the earnings limitation set forth in Article II B. of the Plan.