
OPINION OF TRUSTEES

In Re

Complainant: Pensioner
Respondent: Employer
ROD Case No: 84-475 - December 15, 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

Funds' records indicate that the Complainant's last classified signatory employment in the coal industry was with the Respondent in August 1979. The Complainant was awarded Social Security Disability Insurance ("SSDI") benefits, effective August 1, 1979, as a result of occupational pneumoconiosis. On July 5, 1985, the Complainant was awarded a UMWA 1974 Pension Plan Deferred Vested pension based on a total of 26 1/2 years of credited service, effective June 1, 1985. The Complainant was advised by letter to contact his last signatory employer, the Respondent, concerning the provision of health benefits coverage as a Pensioner. The Respondent was provided a copy of that letter.

The Complainant has stated that the Respondent did not provide health benefits coverage for him until around August 1986. The Complainant states that he has unpaid medical bills which were incurred by his spouse between September 1986 and November 1986. The Complainant has stated that after these bills were incurred, his coverage was terminated. The Complainant contends that the medical bills should be paid by his last employer, the Respondent.

The Respondent claims that the Complainant voluntarily terminated his employment with the Respondent and that he was not unable to work at that time. The Respondent alleges that the Complainant was employed with Banner Coal and Land Company, another signatory Employer, after he left the Respondent's employ in August, 1979. In support of its position, the Respondent has submitted (1) a letter from the Workers' Compensation Fund indicating that the Complainant is receiving a permanent partial disability award (versus a total disability award); (2) an affidavit signed by the general manager of the Respondent stating that the Complainant was recalled to work in less dusty areas in July and September 1982 and July 1983; (3) an affidavit signed by a senior Employee of the Respondent stating that he was sent to notify the Complainant of recall;

and (4) an affidavit signed by a former employee of Banner Coal and Land Company stating that the Complainant worked regularly for Banner Coal and Land Company from February 1980 to June 1981. The Respondent claims that it is not the Complainant's last signatory employer, and therefore, it is not responsible for providing the Complainant's health benefits coverage as a Pensioner. The Respondent also contends that it is insolvent, and therefore, health benefits should be provided under the 1974 Benefit Plan and Trust. The Respondent has stated that, at the time the Complainant's outstanding medical bills were incurred, it had agreed to provide coverage for the Complainant under its benefit plan for salaried employees. The Respondent has stated that it agreed to provide such coverage as a favor to the Complainant who was unemployed and without coverage at the time.

A statement has been submitted to the Funds from Banner Coal and Land's payroll department indicating that they have no record of the Complainant being employed as a classified employee. No hours were reported to the Funds by Banner Coal and Land for the Complainant. In addition, the Complainant's union dues record indicates that the Complainant's last working union dues were for August 1979, when the Complainant was last employed by the Respondent; dues were paid until April 1987 in an unemployed status. The Complainant has submitted a copy of his W-2 form for 1979 showing wages from employment with the Respondent. He has stated that the Respondent is his last employer and that this is the last W-2 form he has received.

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 Respondent is not the Complainant's last signatory employer; therefore, it is not responsible for providing the Complainant's health benefits coverage as a Pensioner. Furthermore, the Respondent is insolvent and financially unable to provide such coverage.

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 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 (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) of the Employer Benefit Plan provides:

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.

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. 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 G. of the 1974 Plan, is eligible for health benefits coverage under the Employer Benefit Plan. Inasmuch as the Complainant was awarded a UMWA 1974 Pension Plan Deferred Vested pension effective June 1, 1985, based on 26 1/2 years of credited service, the Complainant meets the eligibility requirements of Article II B. and is entitled to health benefits coverage from his last signatory employer.

The issue here is whether the Complainant's last signatory classified employment was with the Respondent. The evidence submitted by the Respondent supports its allegations that the Complainant was not totally disabled when his employment with the Respondent ceased, and that he later refused recall to employment with the Respondent. However, such evidence is not sufficient to establish that the Complainant was employed in a classified position with Banner Coal and Land Company, another signatory Employer, following his employment with the Respondent. Moreover, the affidavit signed by a former employee of Banner Coal and Land Company and submitted by the Respondent does not specify the type of work the Complainant allegedly performed for Banner Coal and Land Company in 1980 and 1981. Additional evidence submitted in this case indicates that there is no record of the Complainant being employed by Banner Coal and Land as a classified employee and that his last working union dues were paid in August 1979. Furthermore, Banner Coal and Land Company did not report any hours of service to the Funds for the Complainant, as required under the terms of the Wage Agreement. Inasmuch as the evidence submitted is insufficient to establish that the Complainant was employed in a classified position with Banner Coal and Land Company following his employment with the Respondent, the Trustees conclude that the Complainant's last signatory classified employment was with the Respondent. Therefore, the Respondent is responsible for providing health benefits coverage for the Complainant as a Pensioner and for his eligible dependents, effective June 1, 1985. The Respondent's claim that it is insolvent and financially unable to provide health benefits does not relieve it of its obligation to provide such benefits under the Wage Agreement.

The Respondent suggests that the Complainant's health benefits coverage should be provided by 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

The Respondent is responsible for providing health benefits coverage for the Complainant and his eligible dependent under the terms of the Employer Benefit Plan, effective June 1, 1985.