
OPINION OF TRUSTEES

In Re

Complainants: Pensioners
Respondents: Employers
ROD Case No: 84-523 - June 6, 1988

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 five (5) Pensioners receiving Minimum Disability pensions under the UMWA 1974 Pension Plan. Four of the Complainants were last employed in classified jobs in the coal industry by W&B Coal Company ("W&B"). The representative for the Complainants states that W&B terminated health benefits coverage for these four Complainants in March 1987. The remaining Complainant was last employed in a classified job in the coal industry by Wicker Brothers Coal Company ("Wicker Brothers") on December 20, 1980. The representative states that Wicker Brothers has not provided health benefits coverage for this Complainant since his pension was approved, effective January 1, 1981.

W&B, a partnership which included Dan and Virgil Wicker, operated a mine in Knott County under lease from National Mines. W&B was signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1978. In June 1980, National Mines terminated its purchase of coal from W&B and operations at that mine ceased. Shortly thereafter, the partners applied for a mining permit at a new site on Middle States property. On November 6, 1980, Dan Wicker signed the 1978 Wage Agreement and began operations at the new site under the name of Wicker Brothers Coal Company, using essentially the same work force and equipment as W&B had used at the National Mines site. Wicker Brothers was also a partnership which included Dan and Virgil Wicker. Wicker Brothers operated the mine site on Middle States property until the expiration of the 1978 Wage Agreement on March 27, 1981. Information received by the Funds indicates that Wicker Brothers was incorporated on June 10, 1981. Wicker Brothers did not sign the 1981 Wage Agreement and there is no evidence that Wicker Brothers operated during its term.

In June 1981, the owners of Wicker Brothers re-opened the National Mines site in Knott County as W&B Coal Company, Inc., and Dan Wicker signed the 1981 Wage Agreement on behalf of the corporation on June 7, 1981. The stock of the corporation was owned by Dan and Virgil Wicker, and the corporation utilized substantially the same workforce and equipment as had the Wicker Brothers and W&B partnership before it. W&B, Inc., ceased operations in 1983 and did not sign the 1984 Wage Agreement. On May 29, 1986, Wicker Brothers Coal Company, Inc., became signatory to the 1984 Wage Agreement and resumed operations on National Mines property in Knott County. Dan Wicker, as owner, signed a Memorandum of Understanding with the UMWA indicating that any new employees hired by Wicker Brothers would be called from the panel at W&B. In addition, the Memorandum stated that any further mines operated on National Mines property would be operated "UMWA" and the panels at Wicker Brothers and W&B would be honored.

The representative for the Complainants asks who is responsible for providing health benefits coverage for the Complainants as Pensioners.

Dispute

Who is responsible for providing health benefits coverage for the Complainants as Pensioners?

Positions of the Parties

Position of the Complainants: The representative for the Complainants asks who is responsible for providing health benefits coverage for the Complainants as Pensioners.

Position of the Respondents: The Respondents have not replied to repeated correspondence from understaff requesting their positions in this dispute.

Pertinent Provisions

Article XX(c)(3)(i) of the National Bituminous Coal Wage Agreement of 1978 provides in pertinent part:

(3)(i) Except as provided in (ii) below, effective on June 1, 1978, each signatory Employer shall establish 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 classified employment was with such Employer. The benefits provided pursuant to such plans shall be guaranteed during the term of this Agreement by each Employer at levels set forth in such plans...

(ii) In lieu of (i) above, any signatory Employer may elect to implement the above health benefit coverage through a private insurance carrier(s) on the effective date of this Agreement.

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.

Article I (1), (2) and (5) of the 1978 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 1978, as amended from time to time and any successor agreement.
- (5) "Pensioner" shall mean any person who is receiving a pension, other than a deferred vested pension based on less than 20 years of credited service, under the United Mine Workers of America 1974 Pension Plan (or any successor thereto) whose last classified employment was with the Employer.

Article I (1), (2) and (5) of the 1981 and 1984 Employer Benefit Plans 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 [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. of the 1978 Employer Benefit Plan provides:

B. Pensioners

Health benefits and life insurance under Article III hereof shall also be provided to any Pensioner who is receiving pension benefits under the 1974 Pension Plan, or any successor thereto, provided that (i) the Pensioner is not receiving 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, or (ii) that the Pensioner is not receiving a deferred vested pension based on less than 20 years of credited service. Notwithstanding (i) and (ii) immediately above, 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. Health benefits shall not be provided for any month in which the Pensioner earns more than \$200.

Article II B. (1) of the 1981 and 1984 Employer Benefit Plans 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 1978, 1981 and 1984 Wage Agreements 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. Article II B. of the Employer Benefit Plan establishes that an individual who is eligible for pension benefits under the UMWA 1974 Pension Plan is eligible for health benefits coverage under the Employer Benefit Plan. Inasmuch as each of the Complainants were awarded a UMWA 1974 Pension Plan Minimum Disability pension, each is eligible for health benefits coverage under the Employer Benefit Plan established by his last signatory Employer.

The issue here is whether Wicker Brothers Coal Company, Inc., is now responsible for providing health benefits coverage for the four Complainants who last worked for W&B, as well as for the remaining Complainant who last worked for Wicker Brothers during the term of the 1978 Wage Agreement. In ROD 81-327 (copy enclosed herein), the Trustees determined that W&B Coal Company and Wicker Brothers Coal Company, constituted substantially the same Employer. Therefore, because each company may be considered signatory to the 1978, 1981 and 1984 Wage Agreements, Wicker Brothers Coal Company Inc., as the same employer as W&B, is responsible for providing health benefits coverage for the Complainants as Pensioners, consistent with the terms of Article II B. of the Employer Benefit Plan.

Opinion of the Trustees

Wicker Brothers Coal Company, Inc., is responsible for providing health benefits coverage for the Complainants as Pensioners, consistent with the terms of Article II B. of the Employer Benefit Plan.