

OPINION OF TRUSTEES

In Re

Complainants: Laid-off Employees
Respondent: Employer
ROD Case No: 84-528 - September 13, 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 continued benefits coverage for laid-off Employees under the terms of the Employer Benefit Plan.

Background Facts

The Complainants were employed in classified jobs by the Respondent until March 27, 1987, when they were laid off and the Respondent ceased operations. The representative for the Complainants has stated that at the time of layoff, the Respondent informed the Complainants that their health benefits coverage would be continued for one year beyond the date of layoff, and that such coverage would continue in effect if they were employed by another employer that did not provide health benefits coverage. The representative states that the Complainants were never told that they must notify the Respondent by certified mail of the acceptance or termination of other employment, and that they never received any Benefit Plan booklets which included the notification requirements for continuation of coverage. The representative states that the group insurance plan booklet received by the Complainants did not contain the notification requirements of Article III. D. (1)(f) of the Employer Benefit Plan. To support his position, sworn affidavits have been submitted by three representatives for the Complainants who attended meetings with the Respondent's representatives in March, April and May 1987.

The representative for the Complainants states that the Complainants relied on the Respondent's statements concerning the continuation of health benefits coverage and accepted other employment during their layoff. When the Respondent subsequently learned that a Complainant had accepted other employment, it terminated that Complainant's continued health benefits coverage, stating that the Complainant failed to provide notice of other employment as required under Article III. D. (1)(f) of the Employer Benefit Plan. According to information submitted to

the Funds, health benefits coverage for one of the Complainants was terminated as early as July 31, 1987. The representative for the Complainants contends that, given the Respondent's statements that coverage would continue even if the Complainants accepted other employment, and in light of the Respondent's failure to provide the Complainants with a Plan booklet that included Article III. D. (1)(f) of the Employer Benefit Plan, the Respondent is responsible for providing continued benefits coverage for the Complainants for their full periods of eligibility based on their hours worked for the Respondent.

The Respondent maintains that its benefit plan implemented through Connecticut General Insurance Company was administered consistently with the terms of the Employer Benefit Plan established pursuant to the Wage Agreement. To support this statement, the Respondent has submitted a copy of the model Employer Benefit Plan established pursuant to the 1981 Wage Agreement which the Respondent's counsel had requested from the Funds in January 1987. The Respondent has stated that all Employees were provided a Connecticut General Plan booklet. The Respondent has not submitted a copy of that booklet; however, a copy was submitted in connection with a pending ROD involving the Respondent's parent corporation. The Respondent has indicated that it provided the same coverage as the parent corporation. Upon review, Funds staff determined that the booklet does not contain the provisions of Article 111. D. (1)(f) of the Employer Benefit Plan. The Respondent has stated that it is unable to provide company records to establish that the Complainants were otherwise notified of the requirements of Article III. D. (1)(f), and the personnel who administered the Plan are no longer with the company.

The Respondent has stated that on March 30, 1987, it met with the Mine Committee and advised the committee that continued coverage would be provided for the laid-off employees based on their hours worked; any employees' questions regarding such coverage were to be submitted to the Plan Administrator. The Respondent has indicated that one of its representatives did state to some of the Complainants that coverage would be provided for one year. The Respondent noted, however, that that representative was subsequently advised of the conditions under the Plan that would result in termination of such coverage. The Respondent's position is that in this situation the terms of the Plan and the Wage Agreement should prevail.

The Respondent claims that the Complainants were aware of the notification requirements of the Plan. The Respondent has submitted copies of certified letters submitted between August 31, 1987, and January 4, 1988, by some of its laid-off Employees as notification of the acceptance or termination of other employment. The Respondent maintains that it rightfully terminated health benefits coverage for the Complainants who accepted other employment and failed to provide notice of such employment as required under Article III D. (1)(f) of the Plan.

Dispute

Is the Respondent responsible for providing continued health benefits coverage for the Complainants for their full periods of eligibility based on their hours worked for the Respondent?

Positions of the Parties

Position of the Complainants: The Respondent did not inform the Complainants of the terms of coverage or of their specific obligations under Article III. D. (1)(f); therefore, the Respondent is responsible for providing continued health benefits coverage for the Complainants for their full periods of eligibility based on their hours worked for the Respondent.

Position of the Respondent: The Respondent has rightfully terminated continued health benefits coverage for the Complainants who accepted other employment and failed to provide notice of such employment as required under Article III. D. (1)(f) of the Employer Benefit Plan.

Pertinent Provisions

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 (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.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

Article III D. (1) (a) and (f) of the Employer Benefit Plan provide:

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

(f) Other Employment

Notwithstanding the foregoing, in the event an Employee accepts employment during a period of continued coverage under paragraph (a), health, life and accidental death and dismemberment insurance coverage will terminate as of the date of such employment. If, however, such employment subsequently terminates prior to the date the Employee's coverage under paragraph (a) otherwise terminates, such Employee's health, life and accidental death and dismemberment coverage will be reinstated following the later of (i) termination of such employment or (ii) any continued health coverage resulting therefrom, and will continue to the date such coverage under paragraph (a) would have otherwise terminated. It is the obligation of the Employee to notify the Employer within 10 days by certified mail of both the acceptance and termination of such employment; failure to provide such notice will result in permanent termination of coverage. Nothing in this paragraph shall extend coverage beyond the date determined pursuant to paragraph (a).

Discussion

Article III D. (1)(a) of the Employer Benefit Plan provides continued benefits coverage for a laid-off Employee based upon the number of hours worked for the Employer during the 24-month period prior to the date last worked. Article III. D. (1)(f) of the Plan provides that in the event a laid-off Employee accepts employment during a period of continued coverage under paragraph (a), health, life and accidental death and dismemberment insurance coverage will terminate as of the date of such employment. If, however, such employment subsequently terminates prior to the date the Employee's coverage under paragraph (a) otherwise terminates, coverage may be reinstated if the Employee has provided notice to the Employer by certified mail within 10 days of the acceptance and within 10 days of the termination of such

employment. Failure to provide notice in accordance with Article III D. (1)(f) results in permanent termination of coverage as of the date a laid-off Employee accepts other employment.

The Complainants allege that the Respondent had advised them that their coverage would continue for one year even if they accepted other employment, and the Respondent is therefore responsible for providing coverage for the full year. The Respondent has acknowledged that one of its representatives made a general statement that coverage would be provided for one year; however, the Trustees find no evidence that continued benefits coverage was guaranteed during periods of other employment. Moreover, Article III. D. (1)(f) of the Plan clearly states that if an Employee accepts employment during a period of continued coverage, coverage will terminate as of the date of such employment. Accordingly, the Trustees conclude that the Complainants are not entitled to continued benefits coverage from the Respondent during periods of other employment.

The real issue here is whether the Respondent should reinstate the Complainants' continued benefits coverage upon termination of such employment. The Complainants claim that they are entitled to reinstatement of their benefits because they were not informed of the notification requirements of Article III. D. (1)(f), and they relied on information provided by the Respondent that coverage would continue for one year. The Respondent states that summary plan descriptions of the benefits provided through Connecticut General were distributed to its Employees and that such plan is consistent with the terms of the Employer Benefit Plan. The copy of the Respondent's summary plan description submitted to the Funds does not contain the notification requirements of Article III. D. (1)(f). Furthermore, the Respondent has been unable to provide any documentary evidence which would establish that such notification requirements were otherwise communicated to its Employees. The Respondent claims that the Complainants were aware of the notification requirements because some of them complied with those requirements. The record indicates that those Complainants who provided notice by certified mail within 10 days of the acceptance or termination of employment did so only after coverage for at least one of the Complainants had been terminated on July 31, 1987, and the issue of coverage reinstatement was raised. Thus, such actions alone do not establish that the notification requirements were adequately communicated to the Respondent's Employees.

In ROD 84-146 (copy enclosed herein), involving a similar issue wherein the Employees also claimed lack of knowledge of the notice requirement of Article III. D. (1)(f), the Trustees found that the evidence did not support the Employer's contention that there had been adequate communication of the Plans provision on notice. The Trustees concluded that, absent adequate communication of the Plan's requirements, the Employees had done everything possible to comply with the Plan and the Employer was therefore responsible for reinstating the Employees' continued benefits coverage for the remainder of their individual periods of eligibility. Here, the Respondent's plan booklet clearly does not contain the provisions of Article III D. (1)(f). Further, as in ROD 84-146, the Respondent failed to establish that the notification requirements were otherwise communicated to the Complainants. The Trustees conclude that, without adequate communication of the notification requirements, the Complainants in this case did everything possible to comply with the provisions of the Employer Benefit Plan. The Respondent is thus responsible for providing continued health benefits coverage for the

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Complainants for their individual periods of eligibility as determined under Article III D. (1)(a) of the Employer Benefit Plan, excluding any respective portions of such periods during which the Complainants were otherwise employed.

Opinion of the Trustees

The Respondent is responsible for providing continued health benefits coverage for the Complainants for their individual periods of eligibility as determined under Article III. D. (1)(a) of the Employer Benefit Plan, excluding any respective portions of such periods during which the Complainants were otherwise employed.