

OPINION OF TRUSTEES

In Re

Complainant: Employee
Respondent: Employer
ROD Case No: 88-018 - September 27, 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 payment of a dismemberment benefit to an Employee under the terms of the Employer Benefit Plan.

Background Facts

The Complainant sustained an injury to his right leg in an automobile accident on September 3, 1974. At that time, he was employed by Peabody Coal Company as a classified employee. On September 22, 1977, the Complainant began working in a classified position for his current employer, Zeigler Coal Company, the Respondent.

As a result of the injury sustained in the accident on September 3, 1974, the Complainant suffered from a chronic nonunion of the right tibia. After multiple bone grafting, plating, and osteotomy procedures were unsuccessful, the Complainant had his right leg amputated below the knee on April 12, 1988. The representative for the Complainant contends that the Complainant is entitled to a dismemberment benefit from either the Respondent or Peabody Coal Company.

The Respondent has denied the Complainant's claim for a dismemberment benefit on the grounds that the Complainant's amputation was the direct result of an injury which occurred prior to his employment with the Respondent and prior to the effective date of his dismemberment insurance coverage.

Peabody Coal Company states that it has no dispute with the Complainant since the Complainant is not currently employed by it and is, therefore, not eligible to receive benefits under its Employer Benefit Plan.

Dispute

Whether the Respondent is responsible for payment of a dismemberment benefit to the Complainant.

Positions of the Parties

Position of the Complainant: The Complainant is entitled to a dismemberment benefit from either the Respondent or Peabody Coal Company.

Position of the Respondent: The Respondent is not responsible for payment of a dismemberment benefit to the Complainant because the Complainant's injury occurred prior to his employment with the Respondent and prior to the effective date of the dismemberment insurance coverage provided by the Respondent.

Peabody Coal Company states that it is not a party to this dispute because the Complainant is not currently employed by it nor eligible to receive benefits under Peabody's 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 1988, 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 B. (1)(c) of the Employer Benefit Plan provides:

Article III - Benefits

B. Life and Accidental Death and Dismemberment Insurance

- (1) Active Employees

Life and accidental death and dismemberment insurance will be provided for Employees, as described in Article II, Sections A and C(3), in accordance with the following schedule:

(c) If an Employee shall lose two or more members due to violent, external and accidental means as the result of an injury occurring while insured and on or after February 1, 1988, such Employee shall receive a \$35,000 dismemberment benefit. If an Employee shall lose one member due solely to violent, external and accidental means as the result of an injury occurring while insured and on or after February 1, 1988, such Employee shall receive a \$17,500 dismemberment benefit. A member for the purpose of the above is (i) a hand at or above the wrist, (ii) a foot at or above the ankle or (iii) total loss of vision of one eye.

Discussion

Article III. B. (1)(c) of the Employer Benefit Plan states that an Employee who loses one member due solely to violent, external and accidental means as the result of an injury occurring while insured shall receive a \$17,500 dismemberment benefit. Under the Plan, a member is defined as (i) a hand at or above the wrist, (ii) a foot at or above the ankle, or (iii) total loss of vision of one eye.

The issue here is whether the Complainant, whose leg was amputated below the knee on April 12, 1988 as the result of an injury that occurred on September 3, 1974, is entitled to a dismemberment benefit. At the time the Complainant's injury occurred, health benefits coverage for active Employees was provided by the UMWA Welfare and Retirement Fund, in accordance with Health Care Services Resolution No. 94. Under Resolution No. 94, there were no provisions for life or accidental death or dismemberment coverage. Such coverage was first provided when the Employer Benefit Plans were established pursuant to the National Bituminous Coal Wage Agreement of 1978, ratified March 27, 1978. Inasmuch as the Complainant did not have accidental dismemberment insurance coverage at the time his injury occurred, he is not entitled to a dismemberment benefit.

Opinion of the Trustees

The Complainant is not entitled to a dismemberment benefit from either the Respondent or Peabody Coal Company, his former Employer.