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OPINION OF TRUSTEES

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In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 88-561 - July 7, 1993

Board of Trustees: Michael H. Holland, Chairman; Thomas F. Connors, Trustee; Marty D. Hudson, Trustee; Robert T. Wallace, Trustee.

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

On March 23, 1983 while employed in a classified position by the Respondent, the Complainant sustained an injury. The Social Security Administration determined that the Complainant was eligible for Social Security Disability Insurance ("SSDI") benefits from March 23, 1983 through August 31, 1984. In June 1985, the Complainant applied for pension benefits from the UMWA Health and Retirement Funds. He was notified by letter dated March 13, 1987 that he was eligible for a UMWA 1974 Pension Plan minimum disability pension for a closed period of payments effective April 1, 1983. The Complainant's eligibility for disability pension benefits ended August 31, 1984. Upon receiving notification of the Complainant's pension eligibility, the Respondent apparently overlooked the fact that pension benefits were for a closed period beginning April 1, 1983 and provided the Complainant with a permanent health card effective March 27, 1987.

The Complainant worked for two coal construction companies signatory to the UMWA National Coal Mine Construction Agreement in 1988 and 1989 and ceased work because of disability in May 1989. The Complainant reapplied for SSDI benefits, and his application was approved by an Administration Law Judge on September 17, 1990, with a disability onset date of May 31, 1989. The Complainant reapplied for UMWA pension benefits and was awarded a 1974 Pension Plan disability pension effective June 1, 1989. The Complainant was advised to contact the Respondent regarding his eligibility for health benefits coverage. The Complainant states that the Respondent has refused to provide his health benefits coverage.

The Respondent states that the Complainant was not eligible for health benefits coverage from March 24, 1987 to November 29, 1989. The Respondent contends that if the Trustees determine that the Respondent is required to provide health benefits coverage for the

Complainant as a Pensioner, the Complainant must first reimburse the Respondent for the medical expenses it paid from March 24, 1987 to November 29, 1989.

### Dispute

Is the Respondent required to provide benefits coverage for the Complainant as a Pensioner effective June 1, 1989? If the Respondent is required to provide coverage to the Complainant as a Pensioner, is the Respondent entitled to recover benefit payments erroneously provided to the Complainant from March 24, 1987 to November 29, 1989?

### Positions of the Parties

Position of the Complainant: The Respondent is required to provide health benefits coverage for the Complainant as a Pensioner effective June 1, 1989.

Position of the Respondent: If the Trustees determine that the Respondent is required to provide health benefits coverage for the Complainant as a Pensioner, the Respondent is entitled to offset against the medical expenses paid by the Respondent from March 24, 1987 to November 29, 1989.

### Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1988 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....

Article I (1),(2),(5) and (9) 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.

- (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.

(9) "Signatory Service" shall have the meaning assigned to such term in the United Mine Workers of America 1974 Pension Plan (the "1974 Pension Plan") or any successor thereto.

Article II B. (1) of the Employer Benefit Plan 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) February 1, 1988, 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 II B. of the Employer Benefit Plan establishes that an individual who is eligible for pension benefits under the 1974 Pension Plan is eligible for health benefits coverage under the Employer Benefit Plan, with certain exceptions not relevant here. Inasmuch as the Complainant is receiving a 1974 Pension Plan Minimum Disability pension effective June 1, 1989, he is eligible for health benefits coverage under Article II B. of the Employer Benefit Plan.

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement (Wage Agreement) of 1988 requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for Pensioners whose last signatory classified employment was with such Employer. The Respondent contends that because the Complainant's last signatory classified service was with an employer signatory to the UMWA Coal Mine Construction Agreement, the construction employer is responsible for providing health benefits coverage for the Complainant. Article I (9) of the Employer Benefit Plan states that classified signatory service "shall have the meaning assigned to such term in the UMWA 1974 Pension Plan...." Under the 1974 Pension Plan service performed after June 30, 1985 for employers signatory to the Coal Mine Construction Agreement does not qualify as classified signatory service. Inasmuch as the Complainant's employment with a signatory coal construction employer occurred after June 30, 1985, that employment does not qualify as classified signatory service under the Employer Benefit Plan. Accordingly, the Complainant's last classified signatory service was with the Respondent.

The Respondent asserts that if it is required to provide health benefits coverage to the Complainant as a Pensioner, it is entitled to offset \$23,591.80 (the amount the Respondent alleges it paid for benefits to the Complainant from March 24, 1987 to November 29, 1989) against future benefits that the Complainant is entitled to receive under the Employer Benefit Plan. There is no provision in the Employer Benefit Plan providing for offset. However, under Department of Labor opinion letters and other authorities, a welfare plan may use offset to recoup an erroneous payment to a participant or beneficiary, provided the recovery by the plan is prudent. Whether recovery is prudent depends on the facts and circumstances in each case. Thus, for example, it may be prudent for a plan to recoup on a time payment basis by allowing the participant to repay the plan in monthly payments or to offset some portion of the amount of recoupment from the benefits that are distributed to the participant each month. And, in other circumstances, depending upon the hardship resulting to the participant from the recoupment, it may be imprudent for a plan to apply offset.

The information that has been provided by the parties in the ROD is insufficient to determine the amount of the overpayment. The Respondent alleges that the overpayment is \$23,591.80 for benefits provided to the Complainant from March 24, 1987 to November 29, 1989.

However, for a portion of this period (from June 1, 1989 to November 29, 1989) the Complainant is entitled to benefits coverage under the Employer Benefit Plan. Thus, the

overpayment should be adjusted to exclude the benefit payments for services rendered during this period. In addition, information in the file indicates that the Respondent was obligated to provide the Complainant with benefits pursuant to his workers' compensation claim. Thus to the

extent the overpayment includes benefits payable under workers' compensation, such payments also should be deducted from the overpayment amount.

Assuming after these adjustments are made the overpayment is still substantial, then a full offset by the Respondent, whereby the Complainant's benefits are withheld until the overpayment is recouped, may be imprudent because it would result in a hardship for the Complainant due to a loss of benefits coverage for an extended period of time. However, a partial offset, whereby the Respondent allows the Complainant to repay the Plan over an extended period by withholding a sum from benefit payments otherwise to be paid on behalf of the Complainant each month, may be permissible.

Opinion of the Trustees

The Respondent is required to provide health benefits to the Complainant as a Pensioner effective June 1, 1989.