

OPINION OF TRUSTEES

In Re

Complainants: Pensioners
Respondents: Employers
ROD Case No: 88-768 - November 27, 1995

Trustees: Thomas F. Connors, Michael H. Holland, Marty D. Hudson and Robert T. Wallace.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan.

Background Facts

The Complainants are four UMWA 1974 Pension Plan Pensioners. One of the Complainants was awarded a minimum disability pension on April 14, 1993, effective April 1, 1988. His last signatory employer was Birchfield Mining, Incorporated. Another Complainant was awarded a disability pension on May 6, 1992, effective March 1, 1990. His last signatory employer was M.A.E. West, Incorporated. The two remaining Complainants receive minimum disability pensions: one was awarded on June 26, 1992, effective April 1, 1986 and the other was awarded on August 19, 1992, effective December 1, 1988. Their last signatory employer was Davidson Mining, Incorporated.

The Respondent corporations, Birchfield Mining, Inc. ("Birchfield"), M.A.E. West, Inc. ("M.A.E. West"), and Davidson Mining, Inc. ("Davidson") were signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1984 and 1988 and were subsidiaries of Adventure Resources, Inc. ("Adventure Resources"). On November 10, 1989, Castle Rock Coal Corporation ("Castle Rock") purchased from Adventure Resources all of the outstanding common stock of the Respondent corporations. Neither Adventure Resources nor Castle Rock have signed a Wage Agreement.

The representative for the Complainants states that the Respondent corporations have refused to provide health benefits coverage for the Complainants as Pensioners.

Castle Rock, the present stock owner of the Respondent corporations, states that under the terms of the sales agreement with Adventure Resources, Adventure Resources agreed to retain responsibility for providing health benefits coverage for the Complainants.

Effective February 1, 1993, health benefits coverage for the Complainants who last worked for Davidson and Birchfield has been provided under the UMWA 1992 Benefit Plan. Effective

April 1, 1993, health benefits coverage for the Complainant who last worked for MAE WEST has been provided under the UMWA 1992 Benefit Plan.

Dispute

Who is required to provide health benefits coverage for the Complainants as Pensioners?

Positions of the Parties

Position of the Complainants: The representative for the Complainants asks whether the present or the previous owner of the Respondent corporations is required to provide health benefits coverage for the Complainants as Pensioners.

Position of the Respondents: The Respondent corporations through their present owner have disclaimed liability for the Complainants' health benefits coverage as Pensioners.

Pertinent Provisions

Article XX Section (c)(3)(i) of the National Bituminous Coal Wage Agreement of 1984 and 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. 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 [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.

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) October 1, 1984 [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 XX (c)(3)(i) of the 1984 and 1988 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 signatory classified employment was with such Employer. Article II B. of the Employer Benefit Plan provides health benefits coverage to Pensioners. Article I (5) of the Plan defines such Pensioners as any person whose last classified signatory employment was with the Employer, and who is receiving a pension under the 1974 Pension Plan with certain exceptions not relevant here. Inasmuch as the Complainants are receiving disability pensions under the 1974 Pension Plan and the Complainants' last classified employment was with one of the Respondent corporations, the Complainants are Pensioners within the definition of Article I (5) of the Employer Benefit Plan established by the Respondent corporations and the Complainants are eligible to receive health benefits coverage under Article II B. thereof. Accordingly, the respective Respondent corporations are required to provide health benefits coverage for the Complainants as Pensioners.

Although the stock of the Respondent corporations was sold to Castle Rock on November 10, 1989, a change in the identity of stockholders does not affect the corporate existence or the corporation's debts, obligations and liabilities. (See RODs 81-615, 81-666, and 84-372.) Therefore, the Respondent corporations remain liable for the Complainants' health benefits coverage as required by the Wage Agreements and the Employer Benefit Plan.

Castle Rock argues that Adventure Resources is responsible for the Complainants' health coverage pursuant to the November 10, 1989 sales contract. The Trustees in ROD 81-615 concluded that a side agreement to a stock sale, which reportedly included an assumption of liability by the former shareholder for the employer's health benefit obligation, could not "modify or abrogate the contractual rights of the Respondent's employees against it as the primary obligor under the Wage Agreement." Consistent with the finding in ROD 81-615, the sales contract between Castle Rock and Adventure Resources would not modify or abrogate the Complainants' contractual rights against the Respondent corporations as the primary obligor for the Complainants' health benefits coverage under the Wage Agreement. Because the Respondent corporations' liability for the Complainants' health coverage pursuant to the Wage Agreement cannot be changed by a separate agreement between Castle Rock and Adventure Resources, the Trustees decline to make a determination regarding Adventure Resources' liability, rights or obligations under the sales contract.

Opinion of the Trustees

The Respondent corporations are required to provide health benefits coverage for the Complainants as Pensioners consistent with the terms of the Wage Agreements and the Employer Benefit Plan. Thus, Birchfield is required to provide health benefits coverage to its Pensioner effective April 1, 1988; Davidson is required to provide health benefits coverage to its Pensioners effective April 1, 1986 and December 1, 1988 respectively; and M.A.E. West is required to provide health benefits coverage to its Pensioner effective March 1, 1990.