

---

OPINION OF TRUSTEES

---

In Re

Complainants: Pensioners  
Respondent: Employer  
ROD Case No: 98-007 – July 10, 2001

Trustees: A. Frank Dunham, Michael H. Holland, Marty D. Hudson and  
Elliot A. Segal.

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' last signatory Employer was the Respondent. The Complainants are currently receiving special permanent layoff pensions under the 1974 Pension Plan. The special permanent layoff pension was introduced under the National Bituminous Coal Wage Agreement (Wage Agreement) of 1998 to provide pension benefits to an Employee who has been permanently laid off, has at least twenty years of signatory service on his date last worked, and is less than age 55. In order to establish that he has been permanently laid off, the Employee must either have been laid off because the Employer has closed the mine, or have been laid off for at least 180 days and not refused a recall to the mine where he was laid off. When a miner receiving a special permanent layoff pension attains age 55, he becomes eligible for health benefits coverage from his last signatory Employer. The Complainants are under age 55 and, therefore, are not yet eligible for health benefits coverage as special permanent layoff pensioners. The Complainants claim that they meet the eligibility requirements to receive health benefits coverage as disabled Employees under Article II C. (1) of the 1998 Employer Benefit Plan. Under Article II C. (1), certain disabled Employees are eligible for health benefits coverage until they attain age 55.

The Respondent has denied coverage for the Complainants under Article II C. (1) stating that when the Complainants accepted their special permanent layoff pensions, the Complainants "forfeited all associated employee rights." The Respondent argues that, based on this forfeiture, the Complainants can not claim that they are Employees who are disabled. In addition, the Respondent further states that "the status of an Employee and a Pensioner are contradictory and mutually exclusive." Finally, the Respondent claims that if the Complainants want to receive benefits associated with that of an Employee, the Complainants "must relinquish [their] eligibility for the Special Permanent Layoff Pension[s]."

Dispute

Is the Respondent required to provide health benefits coverage for the Complainants as disabled Employees under Article II C. (1) while they are receiving special permanent layoff pensions under the 1974 Pension Plan?

Positions of the Parties

Position of the Complainants: The Complainants meet the eligibility requirements to receive health benefits coverage under Article II C. (1); therefore, the Respondent is required to provide coverage for the Complainants as disabled Employees.

Position of the Respondent: The Complainants are not eligible for coverage as disabled Employees under Article II C. (1) because they have "forfeited all associated employee rights by accepting the Special Permanent Layoff Pension." Thus, the Complainants cannot simultaneously be Pensioners and Employees. In order to receive coverage as disabled Employees, the Complainants "must relinquish [their] eligibility for the Special Permanent Layoff Pension[s]."

Pertinent Provisions

Article XX (10)(c) of the 1998 National Bituminous Coal Wage Agreement provides:

Article XX – HEALTH AND RETIREMENT BENEFITS

(10) HEALTH CARE:

Health care benefits provided under the Employer Benefit Plan are guaranteed during the terms of this Agreement subject to the terms of this Agreement at the level of benefits provided in the Employer Benefit Plan.

- (c) Pensioners receiving a Special Permanent Layoff Pension will be provided health benefits from their Employers in accordance with the layoff benefits otherwise provided under this Wage Agreement; subsequently, upon reaching age 55, such pensioners shall receive health benefits from their Employers.

Article XX (7)(e) of the 1998 National Bituminous Coal Wage Agreement provides:

(e) Special Permanent Layoff Pension – If on or after January 1, 1998, a working miner ceases performing classified work and meet the following criteria:

- (i) he had 20 years of signatory service on his date last worked and was less than age 55; and

(ii)(A) he has been permanently laid off under circumstances in which his Employer has permanently closed the mine, or

(B) he has been permanently laid off;  
then the miner will be eligible to receive a pension computed under the provision of (3) above, calculated as if he were then age 55. In the case of a layoff described in (ii)(A) above, the pension will be effective on the first day of the first month following both the layoff and the filing of a pension application. In the case of a layoff described in (ii)(B) above, the pension will be effective on the first day of the first month following both a period of 180 days after the layoff and the filing of a pension application. A miner will be considered to have been "permanently laid off" under (ii)(B) if he has been on layoff status for at least 180 days, and has not refused a recall to the mine from which he was laid off. A miner who receives this special permanent layoff pension benefit, or any other pension benefit under this Article, forfeits all seniority, panel, and recall rights.

Article I (2), (4) and (5) of the 1998 Employer Benefit Plan provides:

#### ARTICLE I DEFINITIONS

The following terms shall have the meanings herein set forth:

(2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1998, 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.

(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, (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; or (iii) a special permanent layoff pension under the terms of Article II. E(4) of the 1974 Plan, during any period prior to the person's attainment of age 55. "Pensioner" shall not mean any individual entitled to benefits under section 9711 of the Internal Revenue Code of 1986, as amended by the Coal Industry Retiree Health Benefit Act of 1992.

Article II C. (1) of the 1998 Employer Benefit Plan provides:

#### ARTICLE II ELIGIBILITY

C. Disabled Employees

In addition to disabled Pensioners who are receiving pension benefits and are therefore entitled to receive health benefits under section B of this Article II, health benefits under Article III shall also be provided to any Employee who:

- (1)(a) has completed 20 years of credited service, including the required number of years of signatory service pursuant to Article IV C(6) of the 1974 Pension Plan or any corresponding paragraph of any successor thereto, and
- (b) has not attained age 55, and
- (c) became disabled after December 6, 1974 while in classified employment with the Employer, and
- (d) is eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor;

Article III D. (1)(a) of the 1998 Employer Benefit Plan provides:

ARTICLE III BENEFITS

D. General Provisions

1. Continuation of Coverage

(a) Layoff

If any Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment insurance coverage is as follows:

Number of Hours Worked For the Employer in 24 Consecutive Calendar Month Period Immediately Prior To the Employee's <u>Date Last Worked</u>	Period of Coverage Continuation from the <u>Date Last Worked</u>
2,000 or more hours	Balance of month plus 12 months
500 or more but less 2,000 hours	Balance of month plus 6 months
Less than 500 hours	30 days

Opinion of the Trustees

The Trustees deadlocked on this matter. Trustees Holland and Hudson found for the Complainants. Trustees Dunham and Segal found for the Respondent. Under the ROD procedures adopted pursuant to the 1998 NBCWA, the matter was referred to a neutral interest arbitrator, Thomas Tomczyk, for resolution. The arbitrator was directed to choose one of the two draft opinions proposed by the Trustees. The arbitrator's choice is printed below as the opinion of the Trustees.

Decision of the Arbitrator

The Employer is not required to provide continued health coverage to the Complainants as Disabled Employees under the Employer Benefit Plan. Each Complainant will be eligible for Employer-provided coverage upon attainment of age 55.