
OPINION OF TRUSTEES

In Re

Complainant: Surviving Spouse
Respondent: Employer
ROD Case No: CA-008 – October 30, 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 Coal Industry Retiree Health Benefit Act of 1992 (Coal Act) Employer Benefit Plan maintained pursuant to section 9711 of the Internal Revenue Code.

Background Facts

The Complainant is the Surviving Spouse of a 1974 Pension Plan Pensioner who died on December 24, 1983, and whose last signatory Employer was the Respondent. The Pensioner's and the Complainant's granddaughter was born on October 8, 1983. The Complainant alleges that her granddaughter was a dependent of the Pensioner at the time of his death. On June 17, 1996, the Complainant adopted her granddaughter.

The Complainant states that the Respondent should provide health benefits coverage for her adopted granddaughter under the Coal Act Employer Benefit Plan.

Dispute

Is the Complainant's adopted granddaughter eligible for health benefits coverage under the terms of the Coal Act Employer Benefit Plan?

Positions of the Parties

Position of the Complainant: The Respondent is required to provide health benefits coverage for the adopted grandchild as dependent of the surviving spouse.

Position of the Respondent: The Complainant's granddaughter is not entitled to health benefits coverage because she was not adopted by the Pensioner and his spouse prior to his death.

Pertinent Provisions

Pertinent provisions are addressed under two plans: the Coal Act Employer Benefit Plan and the Employer Benefit Plan maintained pursuant to the National Bituminous Coal Wage Agreement of 1988 (1988 Employer Benefit Plan).

Provisions from the Coal Act Employer Benefit Plan are listed first.

Article I (1), (2), (4) and (5) of the Coal Act Employer Benefit Plan:

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) "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 of this Plan. Notwithstanding the foregoing, "Pensioner" shall not mean any person who had not met all age and service requirements for receiving benefits as of February 1, 1993, and shall not mean any person who retires from the coal industry after September 30, 1994.
- (5) "Beneficiary " shall mean any person who is eligible pursuant to the Plan to receive health benefits as set forth in Article III hereof.

Article II of the Coal Act Employer Benefit Plan provides in pertinent part:

ARTICLE II ELIGIBILITY

The persons eligible to receive the health benefits pursuant to Article III are those individuals who are entitled to receive such benefits under section 9711 of the Internal Revenue Code, subject to the eligibility provisions of the Employer Plan in effect on February 1, 1993, and to all other provisions of this Plan.

...

Pertinent provisions from the 1988 Employer Benefit Plan.

Article II D. (2) , (4), (5) and E. (2) of the 1988 Employer Benefit Plan provide:

Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

D. Eligible Dependents

Health benefits under Article III shall be provided to the following members of the family of any Employee, Pensioner, or disabled Employee receiving health benefits pursuant to paragraphs A, B, or C of this Article II:

* * *

- (2) Unmarried dependent children of an eligible Employee or Pensioner who have not attained age 22;
- (4) Unmarried dependent grandchildren of an eligible Employee, Pensioner or spouse who have not attained age 22 and are living in the same household (residence) with such Employee or Pensioner;
- (5) Dependent children (of any age), of an eligible Employee, Pensioner or spouse, who are mentally retarded or who become disabled prior to attaining age 22 and such disability is continuous and are either living in the same household with such Employee or Pensioner or are confined to an institution for care or treatment. Health benefits for such children will continue as long as a surviving parent is eligible for health benefits.

For purposes of this paragraph D, a person shall be considered dependent upon an eligible Employee, Pensioner or spouse if such Employee, Pensioner or spouse provides on a regular basis over one-half of the support to such person.

E. Surviving Spouse and Dependents of Deceased Employees or Pensioners

Health benefits under Article III shall be provided to (i) any unmarried surviving spouse (who was living with or being supported by the Employee or Pensioner immediately prior to the Employee's or Pensioner's death) and (ii) such spouse's unmarried surviving dependent children as defined in subparagraphs (2) and (5) of paragraph D of an Employee or Pensioner who died:

- (2) Under conditions which qualify such spouse for a Surviving Spouse benefit under the 1974 Pension Plan or any successor thereto;

Opinion of the Trustees

The Trustees deadlocked on this matter. Trustees Holland and Hudson found for the Complainant. 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 Plan is not required to provide health benefits coverage for the retired miner's grandchild, who was adopted by the miner's surviving spouse after her grandfather's death.