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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondents: Riverside Enterprises, Inc. and Maple Meadow Mining Co.  
ROD Case No: 81-452 - April 29, 1985

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 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. The dispute concerns which Employer is responsible under the terms of the Employer Benefit Plan for the provision of benefits coverage for a Pensioner who returned to classified employment with a different Employer and retired again before performing at least three years of credited service. The Trustees hereby render their opinion on the matter.

### Background Facts

The Complainant is a 1974 Pensioner with a total of thirty-eight (38) years of credited signatory service. On January 31, 1979, the Complainant retired from Maple Meadow Mining Co., a division of Cannelton Industries, Inc. (Cannelton), where he had been employed since May 15, 1978. The Complainant began receiving retirement pension benefits under the 1974 Pension Plan, effective February 1979, based on 36 1/4 years' credited service. His coverage under Cannelton's Employer Benefit Plan also was effective February 1, 1979, in accordance with the provisions of the NBCWA of 1978 (1978 Wage Agreement).

The Complainant was again employed under the 1978 Wage Agreement when he commenced employment with Riverside Enterprises, Inc. (Riverside) on July 7, 1980. Cannelton terminated the Complainant's coverage under its Employer Benefit Plan, effective January 1, 1981, when the Complainant notified Cannelton that he was employed by Riverside.

The Complainant was laid off by Riverside on August 7, 1981, whereupon he applied to the Funds to have his pension benefits reinstated. The Funds reinstated his pension benefits effective September 1, 1981, and increased the amount of his monthly benefit to reflect 1 3/4 years credited service accrued as the result of his employment with Riverside.

Evidence in the case file indicates that in December 1981, Riverside ceased operations at the mine from which the Complainant was laid off, and ceased to provide benefits coverage to its former

employees after May 15, 1982. The Complainant contends that Riverside ceased to provide him with benefits coverage immediately following his termination on August 7, 1981.

On November 30, 1982, the Complainant applied for benefits from the 1974 Benefit Plan, contending that his last signatory employer, Riverside, was no longer in business. By letter dated November 17, 1982, the Funds advised the Complainant that his application for 1974 Benefit Plan coverage could not be approved because Riverside had been determined not to be "no longer in business" in accordance with Plan provisions.

In June 1984, the Complainant attempted to reinstate his coverage under Cannelton's Employer Benefit Plan. This request was denied. On March 23 and June 21, 1984, the Complainant submitted requests for Resolution of Dispute as to which Employer was responsible for the provision of benefits coverage.

#### Dispute

Which Employer is responsible for the provision of benefits coverage for the Complainant and his eligible dependents?

#### Positions of the Parties

Position of the Complainant: Which Employer is responsible for the provision of benefits coverage?

Position of Cannelton Industries, Inc.: The Complainant was employed by Maple Meadow Mining Company (Cannelton) from May 15, 1978, to January 31, 1979. He became a Funds' Pensioner effective February 1, 1979, and then returned to work in the coal industry with Riverside Industries on July 7, 1980. The Complainant is not entitled to benefits coverage from Cannelton because it was not the last signatory company for which the Complainant performed classified work.

Position of Riverside Industries: Riverside Industries has not responded to Funds' correspondence.

#### Pertinent Provisions

Article I (4) & (5) and Article II.B. of the 1978 Employer Benefit Plan provide:

#### ARTICLE I - DEFINITIONS

The following terms shall have the meanings herein set forth:

- (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 a deferred vested pension based on less than 20 years of credited service, under the United Mine Workers of America 1974 Pension Plan (or any successor thereto) whose last classified employment was with the Employer.

## 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 also be provided to any Pensioner who is receiving pension benefits under the 1974 Pension Plan, or any successor thereto, provided that (i) the Pensioner is not receiving 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, or (ii) that the Pensioner is not receiving a deferred vested pension based on less than 20 years of credited service. Notwithstanding (i) and (ii) immediately above, 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. Health benefits shall not be provided for any month in which the Pensioner earns more than \$200.

Article I (1), (2), (4) and (5) of the 1981 Employer Benefit Plan provide:

## ARTICLE I - DEFINITIONS

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (name of coal company) . . . .
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1981, 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, 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.

Articles II. A (1) and (2), and B. (1), (2), and (3) of the 1981 Employer Benefit Plan provide:

#### ARTICLE II - ELIGIBILITY

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

A. Active Employees

Benefits under Article III shall be provided to any Employee who;

- (1) is actively at work\* for the Employer on the effective date of the Wage Agreement....
- (2) Is on layoff or disabled from the Employer and had continuing eligibility as of the effective date of the Wage Agreement for coverage under the 1978 Employer Benefit Plan ("prior Plan") as a laid-off or disabled Employee. Coverage for such laid-off or disabled Employees shall not continue beyond the date when they would no longer have been eligible for such coverage under the provisions of the prior Plan; or

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) June 7, 1981.

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.

- (2) Any person who

- (a) has been covered as a Pensioner under this Plan, and
- (b) is again employed in classified signatory employment after June 7, 1981, with an Employer signatory to the Wage Agreement, other than the Employer, shall have coverage under

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\*Actively at work includes an Employee of the Employer who was actively at work on March 26, 1981, and who returns to active work with the Employer two weeks after the effective date of the Wage Agreement.

the Plan suspended during such period of employment. If such person is credited with at least three or more years of service under the 1974 Pension Plan after June 7, 1981, while so employed with the same Employer, coverage shall be terminated under this Plan.

- (3) Any person who
  - (a) has been receiving a pension under the 1974 Pension Plan,
  - (b) has not been previously covered as a Pensioner under this Plan, and
  - (c) is employed in a classified job by the Employer after June 7, 1981, shall, upon subsequent retirement, be covered as a Pensioner under this Plan only if such person is credited with at least three or more years of service under the 1974 Pension Plan subsequent to the most recent date of employment in a classified job with the Employer.

#### Discussion

The Complainant was employed at classified work for Cannelton until January 31, 1979, when he retired. Cannelton provided him with benefits coverage as a pensioner through December 31, 1980. The Complainant worked for Riverside Industries from July 7, 1980, until August 7, 1981, at which time Riverside terminated his benefits coverage. Although the Complainant sought reinstatement of his benefits coverage from Cannelton, the Employer from which he originally retired, Cannelton denied such coverage, citing authority which states that the Employer for which a Pensioner last worked in a classified signatory job is responsible for the provision of his benefits coverage.

Q&A H-3 and ROD No. 153, the authority cited by the Employer, were based on the provisions of the Employer Benefit Plan which were established pursuant to Article XX of the National Bituminous Coal Wage Agreement of 1978. However, because the Complainant last retired under the 1981 Wage Agreement, his current entitlement to health benefits is governed by the terms of the 1981 Employer Benefit Plan.

Under the Employer Benefit Plan established pursuant to the 1978 Wage Agreement, the Complainant was covered first as an active Employee of Cannelton under Article II. A., then as a Pensioner of Cannelton under Article II. B., and finally as an active Employee of Riverside under Article II. A. The 1978 Employer's Benefit Plan provides health benefits coverage "to any Pensioner who is receiving pension benefits under the 1974 Pension Plan . . ." and defines a Pensioner as "any person who is receiving a pension . . . under the United Mine Workers of America 1974 Pension Plan . . . whose last signatory employment was with the Employer." Once the Complainant became an active Employee of Riverside, Cannelton ceased to be his last signatory employer and consequently ceased to have any obligation to provide health benefits for him as a Pensioner under its 1978 Employer Benefit Plan.

The Employer Benefit Plan adopted pursuant to the 1981 Wage Agreement divides Pensioners into three groups in order to determine which employer is responsible for their health benefits. These are: (1) pensioners who are not again employed after their initial retirement date and June 7, 1981 (emphasis added); (2) those who again become employed after June 7, 1981, but who work for less than three years; and (3) those who again become employed and work for three or more years.

The Complainant originally retired from Cannelton on February 1, 1979; he was "again employed" by Riverside on July 1, 1980, subsequent to his original retirement date but not subsequent to June 7, 1981. Therefore, following his retirement from Riverside on August 7, 1981, the Complainant became a Pensioner who was "not again employed . . . subsequent . . . to June 7, 1981." His eligibility for benefits coverage may therefore be determined under Article II.B. (1) of the Riverside Plan. This interpretation is consistent with subparagraphs (2) and (3) of Article II.B.

Article II. B. (2) of the Cannelton Plan does not apply to the Complainant because it refers to a person who "has been covered as a Pensioner under this Plan." As Article II. A. (2) indicates, "this Plan" refers to the 1981 Plan since the 1978 Plan is termed the "prior Plan." The Complainant was never "covered as a Pensioner" under Riverside's 1981 Plan, but only as an active Employee, so that Article II. B. (2) of the Riverside Plan does not apply.

Under Article II. B. (3), the Complainant would not be entitled to benefits under either the Riverside or Cannelton Plan because he did not work for either Employer for three years "subsequent to his most recent date of employment."

Accordingly, the Complainant's eligibility for benefits coverage is determined by Article II. B. (1). Following his retirement on August 7, 1981, the Complainant became a Pensioner who was "not again employed" subsequent to June 7, 1981. Therefore, Riverside is responsible for providing the Complainant and his eligible dependents with health benefits under Article II. B. (1) of its Employer Benefit Plan.

The Trustees note that, on November 7, 1984, they determined that Riverside was "no longer in business" as meant by Article II. E. of the United Mine Workers of America 1971 Benefit Plan and Trust. Accordingly, the 1974 Benefit Plan and Trust will provide benefits for the Complainant and his eligible dependents.

#### Opinion of the Trustees

The Trustees are of the opinion that Riverside is responsible for providing the Complainant and his eligible dependents with health benefits under Article II.B. (1) of its Employer Benefit Plan. Since Riverside is "no longer in business" within the meaning of Article II.E. of the UMWA 1974 Benefit Plan and Trust, the 1974 Benefit Plan will provide such benefits.