

# **WHAT HAPPENED IN THE INDUSTRIAL DISPUTE AT FRICTION DYNAMICS AND THE ENSUING LEGAL CASES ?**

**'A case study of the industrial relations at Friction Dynamics Ltd and the impact of UK employment laws on the workforce'.**

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## **ABSTRACT**

This study attempts to identify the root causes of the industrial trade dispute at Friction Dynamics Ltd and the problems regarding the legal framework surrounding the issue of unfair dismissal of workers while engaged in official industrial action. Data on the dispute was collected by using documentary evidence, conducting interviews, and from knowledge gained through attending lectures, tutorials and using course text materials from the core industrial relations and employment law modules at Keele University. The findings show that the employer broke the law, while the Union complied with the law, resulting in the workers winning an unfair dismissal case at the Employment Tribunal. Yet the employer remained unpunished and the unfairly dismissed workers did not gain reinstatement nor re-employment. The conclusion suggests that the root cause of this industrial conflict is that the legal framework in the UK gives an anti-union employer considerable power within the employment relationship to dismiss a workforce. The notion of taking 'protected industrial action' provides a false promise to workers to the detriment of the community and society. The responsibility for this scenario rests with the present UK Labour government and the European Union.

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## **CHAPTER 1**

### **INTRODUCTION**

#### **1.1 THE DISPUTE**

The Friction Dynamics trade dispute in Caernarfon, North Wales was one of the longest industrial conflicts in British history. This fact alone provides a considerable reason for carrying out an in-depth study, particularly at this time, now that the ensuing legal cases have been concluded. There are a number of important issues resulting from the litigation that have significant and far-reaching consequences for the labour movement. First, the ability of trade unions to effectively represent their members at the workplace through collective bargaining, being restricted by government ideology implemented via the state legal framework. Second, employment law surrounding the concept of 'protected industrial action' and how this functions alongside unfair dismissal law, affecting the ability of a group of workers to exercise the human right to withdraw their labour through official industrial action.

The members of the Transport and General Workers Union (T&GWU) voted to take strike action and the Union took the necessary steps to comply with the law. However, when taking strike action, the workers were dismissed by the employer during a period of lawfully 'protected industrial action'. Consequently, the dismissed workers claimed unfair dismissal at an Employment Tribunal and won the case. The employer decided to appeal, but before that appeal was heard the Company went into administration. Therefore, the employer did not reinstate, re-engage nor pay compensation to the unfairly dismissed workers, and the government took on the liability and costs.



## **1.2 PURPOSE**

The purpose of the study is twofold, as stated by the central research question. 'What happened in the industrial dispute at Friction Dynamics Ltd and the ensuing legal cases?' First, to identify the root causes of the industrial dispute by analysing the actual issues of dispute and the model of industrial relations that operated around the time of the conflict. Second, to identify any weaknesses in the laws surrounding industrial action, unfair dismissal and particularly the concept of protected industrial action.

These lead to various secondary questions, such as: - Did the state provide justice for the unfairly dismissed workers both on a personal level and through punitive measures against the Director(s) who may have broken the law? Has the Labour government made effective changes in the law on industrial action to protect workers during an official dispute? What action can the labour movement / trade unions take to prevent such a case happening again in the future to other groups of workers in the UK? and what specific law changes can be made that could assist in settling a dispute fairly, in preference to inflicting a defeat on either party?

## **1.3 DISSERTATION STRUCTURE**

The aim of the dissertation will be to answer these questions by applying a structure using seven chapters inclusive of this introduction and the conclusion. Each chapter will consist of an introduction and conclusion and there will be some cross-referencing between chapters for clarification, with more detailed evidence being provided by an Appendix. Chapter two, 'Literature Review (Theoretical)' will cover the theoretical

concepts of three main themes including the industrial relations system, unfair dismissal law and the Employment Tribunal system and dismissal during strike action. Chapter three, 'The Empirical Background' will cover the history of the main practitioners involved in the dispute, such as Friction Dynamics Ltd and the T&GWU in N Wales. Chapter four, 'The Legal Background' is a rather descriptive, but factual, outline of employment law before and during the dispute, concerning three main areas of unfair dismissal and the Tribunal system, industrial action and the concept of protected industrial action. Chapter five, 'Research Methods' will explain the approach used to collect relevant data by discussing documentary sources, interviews, difficulties encountered and the reliability, validity and bias of the study. Chapter six, 'Presentation, Analysis and Interpretation of Findings' is by far the longest section and will cover industrial relations; the dispute; strike action, lockout and dismissal; the Employment Tribunal cases; FDL company insolvency and employment law modification. Finally, chapter seven, 'Summary and Conclusion' will include a summary of the whole study, and conclude by discussing more general issues raised by the research findings and attempting to answer the dissertation's central question.

## **CHAPTER 2**

### **LITERATURE REVIEW (THEORETICAL)**

#### **2.1 INTRODUCTION**

This chapter will review some of the theoretical concepts of three main themes that covered the Friction Dynamics dispute. First, industrial relations will be discussed in the context of the perspectives by analysing unitary and pluralist ideology in the industrial enterprise. This will include the impact of the perspectives on collective bargaining coverage. Second, the legal concept of unfair dismissal and the Employment Tribunal system will be assessed in terms of its purpose, function, impact on employers and trade unions, and its limitations. Third, the managerial strategy of dismissing workers while taking strike action will be analysed in the context of the economic impact of industrial conflict on both workers and employers.

#### **2.2 THE INDUSTRIAL RELATIONS SYSTEM**

The term 'industrial relations' defines the connection between employers and workers that is not confined to workplace issues and collective bargaining, but covers a broad range of activities having a widespread economic and social impact (Edwards 2003:1). Flanders (cited in Hyman 1975:11) described industrial relations as 'a study of the institutions of job regulation', which must be extended to take account of sources and consequences of conflict, the structures of power, and the economic, technological and political movements in society. Therefore, an industrial relations system reflects the ideology of a particular society (Dunlop 1958:8). In Britain's capitalist state, business interests usually take preference over workers and the public interest.

Broader industrial relations approaches are portrayed within the context of the Marxist, pluralist and unitary perspectives. Marxist ideals such as social ownership of companies through worker co-operatives, ending workplace exploitation by sharing all profits (Marx 1954:166), and public ownership of industry under a socialist society, may remain an aspiration for workers and their trade unions (Salamon 1998:10). However, for the purposes of this thesis I concentrate on the perspectives that may have operated at the North Wales plant during its existence.

### **Unitary Perspective**

Employers operating under the unitary conception have been forced to accept trade unions, but consider them an encroachment of their authority, organisations that block progress and increase costs. Unions are viewed as an intrusion into a unified employment structure which competes for the loyalty of the employees. This results in measures to weaken the influence and power of unions by undermining representatives and bargaining machineries which damages relationships and diminishes successful negotiation and consultation. However, the unitarist grudgingly accepts the union relationship, purely in the interests of the business (Fox 1966:11-12).

Managers may be reluctant to accept the limitations of their ideology, which often results in a climbdown or change of policy resulting in practices that are alien to their own beliefs. This creates instability as the employer lives in denial of valid industrial conflict. Salamon argued (1998:6) that unitarists believe that conflict is caused by agitators with a pathological social condition, and they describe collective bargaining as an anti-social mechanism. This strongly emphasises the unitary belief in common

purpose and harmony under authoritarian control. Fox (1966:5) stated that once the ideology has been established, those that practise it become reluctant to analyse it.

The unitarist condemns industrial disputes involving so-called restrictive practices and resistance to change as unacceptable behaviour, while collective bargaining encourages the notion of two sides of industry. However, the pluralist sees it more clearly, as rational responses to sectional interests which concern employment protection, stability of remuneration and maintaining job status and demarcation, as well as maintaining group bargaining power (Fox 1966:12). Management attempt to rid themselves of trade unionism by imposition and denunciation, inevitably provoking industrial conflict (Fox 1966:13-14).

Industrial change is unlikely to be accepted by force, but by reconciling management and work groups' aspirations through the process of negotiation resulting in mutual advantage. The unitarist is unable to facilitate this scenario, as a focus on authoritarian leadership undermines the potential for productive joint decision-making. Paradoxically, the notion of strong unitary leadership is exposed as a weakness by failing to accept the power relations in industry, which prevents progress (Fox 1966:13). For Flanders, the paradox for management was that they can only regain control by sharing it (Williams and Adam-Smith 2006:10).

However, since the above analysis of Fox, unitary methods have been firmly established through Human Resource Management (HRM) which developed from various systems including F.W. Taylor's 'Scientific Management', 1911, and the 'Human Relations' approach (Rose 1988:25). These managerial ideologies are united by the

central purpose to improve productivity by controlling the quality and quantity of work and reducing costs in the drive for profit.

HRM is driven strategically by senior management in a centralised structure where employees are considered as an individual resource for gaining a competitive advantage for the Company. Its features include selecting workers through psychometric testing; performance strategies and targets; technological surveillance; performance monitoring; harsh disciplinary policies, and a lack of welfare arrangements (Guest 1991:151-2). Compounded by lack of supervision, pressurising workers could be counter-productive due to a loss of trust, low morale and feelings of discontent. Storey defined HRM as 'hard', showing a dispassionate view of the employee as being an economic factor like any other, or 'soft', such as the human relations approach of communication, motivation and leadership (Kessler and Bayliss 1998:112).

Despite its limitations, the unitary perspective has thrived in British industry since the 1980s, but it cannot be analysed in isolation. It has flourished due to the legal framework that promotes and protects it in the UK. Therefore, its strength is that it has government support, while its weakness is the narrow outlook regarding industrial relations, which in itself produces industrial conflict. Its limitation in social terms is that it measures success purely by short-term profits made for the owners of production, which cannot be in the public interest.

## **Pluralist Perspective**

Over a century ago many employers attempted to assert absolute prerogative over their workforce based on their rights derived from ownership of production. The devastating effects of an unregulated labour market led to the need for a combination of workers to be represented through the process of collective bargaining to provide job security. There are allegiances within an industrial enterprise; workers are likely to support the views of their organisation, just as management uphold the views of the owners. Therefore, in terms of a pluralist perspective, management accepts other forms of leadership, its obvious loyalties within a social system and its legitimate place in joint decision-making (Fox 1966:6).

In an industrial enterprise separate objectives occur due to sectional groups with divergent interests suggesting that the notion of common aims has its limitations. Management need to consider the employees, shareholders, customers, local community and government. Therefore, management cannot govern in the interests of one party, but would need to balance the conflicting interests. The authority over employees concerns economic performance, so by its nature management would work against the interests of its workers which are incompatible with common purpose. This conflicting interest would need to be recognised, contained and balanced within a pluralist system (Fox 1966:3).

Conflict is endemic to industrial organisation, and is not limited to strikes or lockouts, but is expressed by overtime bans, working to rule, going slow, absenteeism, bad timekeeping, worker complaints and high labour turnover. Organised conflict is processed through ballots for industrial action or individual grievances. Nevertheless,

this provides a limited perception of the total conflict, as resentment, low morale and alienation are more likely to be expressed in an unorganised way. Restrictions on output are recognised by industrial sociologists as organised or unorganised conflict, expressed individually or collectively. Unorganised or individual direct action are more personal and therefore, more difficult to resolve (Fox 1966:8-9).

Disruption is more likely to be the outcome of group structure, group relations and policies, rather than aspects of individual human nature (Fox 1966:9-10). The pluralist aims to limit disruption and make productivity improvements by involving the workforce, which assists successful implementation. Salamon (1998:8) argued that in effect this results in management with consent. This leads to the evolution of a bargaining system, designed to reconcile enterprise and work group interests to mutual advantage (Fox 1966:10).

This outlines the pluralistic conception and the social organisation of industry, which accepts limitations of managerial power, and recognises the pursuit of profit in companies, and that increased productivity should be reflected in benefits to workers. Its strength is that trade union recognition through procedural agreements may improve pay and terms and conditions for workers and manage conflict for employers, but its weakness is that it does not challenge ownership of the means of production and exploitative profiteering.

### **Collective Bargaining**

The coverage and participation in the process of collective bargaining relies on numerous factors such as the British state policy adopted through the Whitley Report



1918 and the Donovan Report 1968. Fundamental conclusions were that voluntary collective bargaining was the best and most democratic method of conducting industrial relations, the role of the law should be very limited, and that bargaining at plant and industry level be formalised within comprehensive procedural agreements (Kessler and Bayliss 1998:12-13). However, Lyddon (2007:340) argued that a concern about the impact of industrial relations on Britain's economic performance led to productivity agreements being negotiated at plant level to the detriment of multi-employer bargaining.

State support for collective bargaining ended with the election of a right-wing Conservative government in May 1979. Their ideological beliefs were influenced by unitarist economist Adam Smith which was central to policy changes (Burchill 1997:9). Conservatives believed that unions distorted the free market and encouraged confrontational managerial strategies, resulting in major industrial conflicts during the 1980s. In 1993 the statutory duty of ACAS to encourage the extension of collective bargaining was removed, and there was no longer a state concept of 'good industrial relations' (Kessler and Bayliss 1998:69). This transformed British industrial relations from a pluralist policy to a radical unitary one.

The employer's strategy to decentralise collective bargaining was intended to link pay structures with business divisions and local labour markets. Consequently, this divided the workforce, damaged the unions' ability to organise national campaigns, and weakened the impact of industrial action. Multi-employer bargaining, that influenced pay increases for manual workers in private manufacturing industry, decreased from 61 percent in 1980 to 42 percent in 1990 (IRS Sept-1993:7-8). In 1979 around 17.5

million (78%) UK workers were covered by collective bargaining arrangements, which plummeted to around seven million (35%) in 2005 (Ewing 2006:256). This resulted in a deterioration in industrial democracy and a widening of the wealth gap in UK society.

Irrespective of state policy, employers favour collective bargaining if it assists them in implementing improvements in productivity. The outcomes depend on the strength, organisation and power of trade unions, as some can force employers to negotiate on a broad range of issues, while others in a weaker position may be de-recognised. The economic circumstances, technological change and, particularly, the legal framework, can also alter the bargaining relationship.

### **2.3 UNFAIR DISMISSAL LAW AND THE EMPLOYMENT TRIBUNAL SYSTEM**

Preceding the unfair dismissal legislation, employers were allowed to dismiss at any time for any reason, which violated the International Labour Organisation (ILO) Recommendation 119. The UK government's acceptance in 1963 stimulated the move towards dismissal protection. However, a survey conducted by the TUC in 1961 found that 44 out of 57 trade unions preferred to deal with dismissals through collective bargaining procedures (Dickens et al. 1985:9).

The government hoped that statutory protection via an individual dispute settlement mechanism would reduce or prevent industrial action over workplace dismissals. In 1968, one-fifth of all strikes stemmed from discharge of workers and disciplinary issues, amounting to around 200 per annum. This explains the introduction of the unfair dismissal provisions by a Conservative government in the Industrial Relations Act (IRA) 1971 (Dickens et al. 1985:10). However, trade unions were concerned that

the legislation may weaken their authority by removing a major reason why workers became members, as they could provide job protection by using their well-established methods of workplace representation. Ironically, once established, unions requested that the legislation be strengthened, which materialised in Trade Union and Labour Relations Act (TULRA) 1974 and 1976 (Dickens et al. 1985:11).

Industrial Tribunals, established in 1965, were composed of a legally qualified chairperson and two lay members to represent both sides of industry, provide a judicial balance and to bring experience and expertise on workplace issues (Dickens et al. 1985:3). The Tribunals dealt with issues including redundancy, discrimination, equal pay and unfair discipline of trade union members. However, around 73% of claims registered in 1983 were for unfair dismissal (Dickens et al. 1985:6), and these still formed the highest proportion in 2008/09, reaching 52,711 in total (Tribunal Service 2009).

The process included individual conciliation, introduced as a means to resolve disputes between the parties by reaching a mutual agreement, which was preferable to an imposed decision of the Tribunal. ACAS was successfully brought into this role in the mid 1970s and disposed of around two-thirds of unfair dismissal cases (Dickens et al. 1985:8). This compares with a reduction to 42% being settled in 2008/09 (Tribunal Service 2009).

The majority of Tribunal decisions tend to be unanimous, which reflects the influence and legal knowledge of the chairperson and highlights the limitations of the panel members. This undermines the original intention to provide a system of lay member representation by moving towards a more legalistic approach which favours the

employer (Dickens et al. 1985:84). In 1982 less than a third of ET cases resulted in findings in favour of the Applicant (Dickens et al. 1985:105). In 2008/09, out of 172,944 total claims, only 13% were successful at Tribunal, 32% were settled by ACAS, and 55% were unsuccessful (Tribunal Service 2009).

The legal test of fairness is not necessarily concerned with the concept of justice, but whether it falls within a range of 'reasonable employer' conduct. The concept of fairness is located within a framework which accepts the dominant position of the employer in the employment relationship (Dickens et al. 1985:106). This undermines the principle of a fair trial by balancing the outcome in favour of management, which cannot be in the public interest.

The Tribunal system appeared to be less efficient when compared with other courts, explained in terms of providing inadequate remedies. In 2008/09, of 3,935 unfair dismissal cases upheld, 2,488 were awarded compensation and only seven received reinstatement or re-engagement (0.1%) (Tribunal Service 2009). However, the Tribunals appear to be efficient from an employer's perspective due to limited accessibility for workers, low cost to themselves and a system that generally endorses their dismissals (Dickens et al. 1985:220-21).

The government objective for a considerable reduction in industrial action has not been achieved, as unions are more likely to use their collective power as a logical response to the malfunctions of the ET system (Dickens et al. 1985:269). Strikes over non-redundancy dismissals amounted to around ten percent between 1964 and 1966, and only reduced slightly to nine percent in 1982 (Anderman 2000:180-1). This

demonstrates that the most effective method of job protection may be for unions to threaten or to take industrial action.

#### **2.4 DISMISSAL DURING STRIKE ACTION**

The most noticeable manifestation of industrial conflict is expressed by workers carrying out the human right to withdraw their labour. Griffin (cited in Hyman 1977:17) stated, "A strike can be defined as a temporary stoppage of work by a labour force to express a grievance or to enforce a demand". Strike activity is a rational global social phenomenon requiring an analysis of why trade disputes translate into strike action, which is the last resort for the workforce. However, strikes are temporary in nature and taken with the expectation that employment will resume when the dispute has been resolved (Williams and Adam-Smith 2006:268).

Kessler and Bayliss (1998:240) maintain that strikes have a symbolic significance as they inflict economic damage in a strategic attempt to win concessions in the employment relationship. Official strikes require a decision to be made by the policy-making body of the trade union, though the law now tends to define this, and they normally occur after months of trying to resolve a disputed issue. Unofficial action can have serious legal implications for trade unions and the individual members that embark on wildcat strikes (Williams and Adam-Smith 2006:268-9). However, they can be effective if well organised, particularly by skilled workers who may be difficult to replace due to labour market conditions.

Strike activity is influenced by the fluctuating 'balance of power' between capital and labour which is affected by economic circumstances, union organisation and labour

law. Williams and Adam-Smith (2006:269) argued, that the notion often perpetrated by employers and government that strike action is abnormal cannot be sustained. Nevertheless, strike activity has been reduced considerably in the UK over the last few decades. The average number of strikes fell from an annual peak of 2,846 between 1968 and 1974, to a low of only 128 between 2002 and 2005 (Lyddon 2007:340).

Although the regularity of official strikes has decreased, these figures cannot represent the total amount of industrial conflict in British industry, as disaffection can be expressed in many different forms. An Individual worker's action can include absenteeism, sabotage, fiddling, and imposing the ultimate sanction against the employer of resignation. Collective action short of a strike may include overtime bans, work to rule, go slow and withdrawal of goodwill (Williams and Adam-Smith 2006:286). However, a reason for the reduction in strikes and an increase in alternative forms of action might be in response to the extreme employer tactic of dismissing strikers, because they break the contract of employment (see Chapter 4.4).

Between July 1986 and August 1989 there were 45 cases and 38 threats of dismissal of workers engaged in strike action. Two examples include a dispute at News International during 1986-87 lasting 54 weeks resulting in around one million working days lost, affecting the distribution of newspapers, and resulting in 5,500 strikers being dismissed. Only fifty percent accepted an offer of re-employment without union recognition (Lyddon 2007:347). The Liverpool Dockers were dismissed in September 1995 by the Mersey Docks and Harbour Company for refusing to cross picket lines. This unofficial action led to various solidarity actions being taken in 27 countries before

the employer's offer of compensation was agreed with the TGWU in January 1998 (Lyddon 2009:334).

Hendy and Gall argue that the UK law breaches ILO Conventions and decisions of the European Court of Human Rights (ECHR) (Ewing 2006:252). However, a major reason for such collective dismissals is the willingness of replacement workers to cross picket lines, particularly in areas of high unemployment or low trade union principles.

Although considered defeats for unions, they provide only partial victories for employers, because of significant financial costs caused by the disruption and lost production. Considerable costs include the loss of an experienced workforce; recruiting and training replacements; the impact of bad publicity on customers, and legal advice and representation in court. In comparison, the human costs to the worker facing unemployment, poverty and a possible employment blacklisting are devastating.

Nevertheless, in June 2009 a dispute ignited at the Lindsey Oil Refinery, Lincolnshire, when Total Ltd made 51 employees redundant, while another employer was hiring new staff on the same project. Hundreds of workers stopped production in protest and unofficial industrial action spread across the UK. This resulted in 647 workers being summarily dismissed as the management attempted to assert unilateral authority and refused to negotiate. However, when the escalation of secondary action involved around 4,000 workers nationwide, the dismissed workers were victoriously reinstated (Milne 2009:27).

## 2.5 CONCLUSION

First, industrial relations encompass broader economic, social and political circumstances. The pluralist perspective has been replaced by the unitary perspective in the UK through HRM supported by legislation. However, many employers prefer to use collective bargaining as the best method to implement workplace productivity.

Second, the weakness of unfair dismissal legislation is that it has failed to reduce workplace strikes over dismissals, and is ineffective for workers due to inadequate remedies. Although arbitration may be an improvement on the present system, the most effective way to prevent unfair workplace dismissals is through trade union advocacy. Third, the withdrawal of labour is a fundamental human right, taken as a last resort on a temporary basis. Whether official, unofficial, organised or disorganised, trade disputes have a major economic cost. The employer strategy of collective dismissal of strikers carries financial consequences for both parties. These theoretical issues affected the conflict at Friction Dynamics Ltd, and I now consider the background of the two main practitioners involved in that dispute.



## **CHAPTER 3**

### **EMPIRICAL BACKGROUND**

#### **3.1 INTRODUCTION**

This chapter discusses the background of the two main organisations involved in the dispute at the factory in Caernarfon, North Wales. First, the company Friction Dynamics Ltd (FDL) will be studied by considering the predecessor Ferodo Ltd, its later financial problems and the industrial relations that operated from the early 1960s until the takeover in 1997, as well as by examining the background career of the new Director and the financial position of the Ferotec group in 1999. Second, the establishment of the T&GWU in N Wales, including its merger with unions of the area such as the North Wales Quarrymen's Union (NWQU) in 1922. The coverage, policies, representation and leadership will be discussed briefly, including a profile of the officials in place prior to the dispute.

#### **3.2 FRICTION DYNAMICS LTD**

Ferodo Ltd was built on the banks of the Menai Straits in Caernarfon in 1961, and manufactured brake and clutch linings for the motor car industry. The government regional economic policy at this time directed industry to areas of higher unemployment. This type of employment replaced job losses in the slate industries and was a welcome change to the harsh working conditions of the mines and quarries. Indoor work, a regular income and pension were an improvement for many of the workforce.

Ferodo employed up to 1000 people at its peak, but due to the decline in UK motor car manufacturing and competition from overseas production, the workforce was significantly depleted in the 1980s, and by the 1990s just over 100 workers were left employed (BBC 14.11.2002:1). The plant suffered from a lack of investment, resulting in mechanical breakdown which detrimentally affected production, causing low morale amongst the workforce (Pritchard and Edwards 2005:15).

The T&GWU were recognised by Ferodo for collective bargaining purposes, and during the period from 1962 to 1997, industrial relations appeared to be generally harmonious, apart from one major dispute. Strike action lasting several weeks took place in 1969 over a disputed pay agreement (Employment and Productivity Gazette 1970). This was resolved to the satisfaction of the Union and, more importantly, established joint pay negotiations for future years with another Turner & Newell (T & N) owned plant in Chapel-le-Firth. There was a minor dispute over the dismissal of a Shop Steward in the early 1980s, but official industrial action was prevented due to a satisfactory compensation package being negotiated in settlement (Interview Jones 2009).

During the 1970s and 1980s there was always potential conflict, but Tom Jones, Full-time Officer, explained, "I think the management and the unions saw that we were all in the same boat, so there was always some way of solving any problem that arose in a sensible and reasonable manner" (Pritchard and Edwards 2005:16). This long period of industrial relations stability needs to be considered against a high number of strikes taking place in British industry between 1968 and 1979 (Lyddon 2007:340).

This relationship was reflected in express terms in the worker's contract of employment, in Section 11 - Trade Union Membership: "The Company recognises the T&GWU as the appropriate trade union to represent employees in the job held by you". Further, Section 16 states that a handbook is provided to employees giving relevant details, and a more comprehensive copy can be seen by contacting the Shop Stewards or Line Manager (Ferodo 1988:2). This shows a professional managerial approach by making the employees aware of their terms and conditions.

The Employees Handbook set out comprehensive procedural agreements. The introduction explains, "An induction of a new employee shall be acquainted with the details of the trade union as presented by a trade union official". Section 6.5 states, "In the interests of good industrial relations, employees will be encouraged to join the appropriate trade union with which the company has negotiation rights" (Ferodo 1993). These collective agreements, along with the lack of major disputes, suggest that a pluralist form of industrial relations was operating at the plant from 1962 to 1997.

However, Ferodo neglected to protect the health and safety of workers in the production process, resulting in some being diagnosed with asbestosis. A negotiated settlement was reached for ten victims found suffering from plural plaques in 1998; each received the sum of £3,500, as provisional compensatory awards. Many similar cases were pending, as approximately a thousand employees worked at the plant since 1962. T & N were facing legal action from staff suffering from asbestosis at its other factories, resulting in the Federal Mogal Group going into administration (Kazan-Allen 1998:5).

Consequently, the company was bought in 1997 by an American businessman with extensive knowledge of the industry. The acquisition was achieved after securing financial grants from the Welsh Development Agency (WDA) (Pritchard and Edwards 2005:18). However, the optimism of the workforce needed to be considered against the background of the new owner, Craig Smith from Salt Lake City, Utah. After working for five years as a Mormon Priest, he joined Raymark Ltd in 1980 and became President in 1985 (Pritchard and Edwards 2005:31).

Mr Smith was subject to considerable litigation in the US. It was alleged that he siphoned finance from US firms that were owing to workers who had developed work-related cancer. The allegations include fraudulently transferring money from Raymark; systematic asset stripping causing a loss of \$20 million; attempting to avoid asbestos creditors, and pocketing \$12 million for his family. State and Federal governments claimed \$200 million from Mr Smith for an environmental cleanup at the previous factory sites in Connecticut. Court documents had speculated that Friction Dynamics Ltd could be turned over to Raytech (BBC 11.11.2001:2).

As President he used Raytech as a shield to defraud 700 pensioners of their retirement benefits totalling \$18.5 million, as ruled by the Bankruptcy Court in 1999. On 12<sup>th</sup> January 1998 the Board of Directors dismissed Mr Smith, citing a conflict of interest as a result of failing to disclose business transactions designed to enrich his family at the expense of the shareholders (White 2001:1-2). Conversely, this exposes the complicity and lack of moral judgement of the Board for failing to dismiss him before swindling pensioners.

Taking account of this personal history we need to contemplate whether Mr Smith's takeover of Friction Dynamics was intended to run a viable company for the future, or to asset strip it and close it down. The Ferotec Group Financial Statement of 1999 shows that the turnover had increased from £11.8 million in 1998 to £18.1 million in 1999. The operating profit had shown a slight decrease from £70,000 to £62,000. In 1999 the total assets exceeded £5.6 million and the shareholders' funds totalled £2.1 million. The only Directors and shareholders shown were C.R. Smith and son B.C. Smith (Companies House 1999:5-7).

However, a loan secured on the net assets was due for repayment by February 2002. Negotiations had been frozen due to Ferotec Ltd, Friction Dynamics Ltd and Ferotec Realty Ltd being subject to legal action in the USA. From 1999, the loan of £2.1 million was due in one year, with a further £1 million due within two years (Companies House 1999:16). The 1999 financial accounts show a continuation of profit and demonstrate that the company could continue as a going concern. However, the legal action against the Directors, and the bank's repayment deadlines, applied considerable financial pressure on FDL.

This may have triggered an urgent demand from the Directors to pursue productivity changes in an attempt to increase profits. However, any changes would need to be negotiated with the recognised trade unions, namely the Amalgamated Engineering and Electrical Union (AEEU), the Manufacturing, Science and Finance Union (MSF) and the T&GWU. The latter had the largest membership, totalling 190 out of the 250 employees at FDL (Pritchard and Edwards 2005:19).

### 3.3 TRANSPORT AND GENERAL WORKERS UNION (NORTH WALES)

The Welsh trade union movement has always been a militant one and played a prominent part in Britain's struggle for working class emancipation. The contribution of South Wales workers, particularly in the coal, steel and railway industries, is well-known. However, N Wales should be recognised as one of the strongest organised areas in Britain (Edwards,H 1957:5).

On 1<sup>st</sup> January 1922 the T&GWU was formed by amalgamation of fourteen unions and became one of the largest and most powerful trade unions in the world. Under its first General Secretary Ernest Bevin, the T&GWU established itself early in N Wales mainly due to the merger with the North Wales Quarrymen's Union (NWQU). Formed in 1874 as an industrial union, the NWQU represented both skilled and manual workers (Jones,M 1982:115). R.T. Jones, the General Secretary from 1908 until 1922, negotiated favourable terms of amalgamation including an opt-out clause after five years (Edwards,H 1957:6-7).

The NWQU had been involved in numerous industrial disputes, including the Dinorwic lockout 1885-6, the LLechwedd strike of 1893 (Jones,M 1982:142/162) and an eleven month stoppage at Penrhyn over the right of combination in 1896-7 (Jones,M 1982:181-2/195). The Penrhyn management removed the custom of collecting union subscriptions at the quarry, victimised Union officials and made further unilateral decisions. This led to a dispute in October 1900 resulting in 26 men being dismissed and put on trial. The workforce marched in support and following large scale suspensions and victimisation, 2000 men walked out (Jones,M 1982:211). In September 1903 the General Federation of Trade Unions ended subsistence payments,

resulting in a return to work in November 1903 (Jones,M 1982:215). This was possibly the longest dispute in British industrial history and such resistance of the quarrymen has become part of the folklore of N Wales.

The T&GWU commenced a recruitment campaign, particularly among county council employees, and within three years set up 40 Branches in the region (Edwards,H 1957:37). There were five main centres, including Caernarfon, Festiniog, Felin Heli, Wrexham and Shotton (Edwards,H 1957:8). During the Second World War period, offices were also manned at Ellesmere Port, Dollgelly, Newtown and Flint employing a number of bilingual officials (Edwards,H 1957:59). Membership also increased by amalgamation with the Workers Union which represented farm workers in the rural areas (Edwards,H 1957:21).

Huw Edwards became the Full-time Officer (FTO) for the area in 1932 until his retirement 21 years later (Edwards,H 1957:8). Arthur Deakin, an FTO in N Wales, succeeded Ernest Bevin as General Secretary in 1945, having gained substantial support from officials and members in N Wales District 13. Out of a turnout of 93.2 percent, Deakin received 90.9 percent of the vote (Edwards,H 1957:84).

This general union operated an open recruitment policy by enrolling workers excluded by craft unions that had rigid membership requirements. As a result, membership grew from 350,000 in 1922 to around two million in the 1970's. Members were represented across transportation industries, automobile, construction, chemical and textile industries, and organised, skilled, semi-skilled and unskilled workers, particularly in the manufacturing industry (T&G 2009:1). The T&GWU was known for

its progressive socialist policies which were enshrined within its Rule Books (Hyman 1971:87).

The T&GWU is structured around eight regions, with the whole of Wales being Region Four. Prior to the dispute, the Shop Stewards at FDL were Arnold Bohana and Barry Williams. The latter started at the plant in 1976 and became the Branch Chairman in 1978 (Interview Williams 2009). The Full-time Officer Tom Jones had been a previous employee at Ferodo from the mid 1960s (Interview Jones 2009). After attending evening classes at Bangor Technical College, he was offered the chance to study Economics and Industrial Psychology at Oxford University as a mature student. Unfortunately, Caernarfon County Council refused a grant and Mr Jones stayed at Ferodo, but then became active in the T&GWU (Pritchard and Edwards 2005:28).

Mr Jones was elected to the post of Shop Steward in 1969 and later to Branch Chairman, Delegate to District and Regional Committees and the Wales TUC. In the mid 1970s he took a temporary job as an FTO in Cardiff, and within two years he was appointed as the Officer for the Caernarfon area aged 28, relatively young for an FTO in Wales (Pritchard and Edwards 2005:29). Tom Jones was also aware of the dangers of asbestosis, which affected slate quarry workers as well as those involved in the production process at FDL. He had considerable knowledge of the production systems and industrial relations, and being bilingual, built up personal relationships with workers and managers at the plant (Interview Jones 2009). Bill Morris was the General Secretary from 1991 to 2003, and the experience of these officials was to be a major advantage to the membership during the FDL dispute (T&GWU 2009:1).



### **3.4 CONCLUSION**

Ferodo was established in Caernarfon due to regional economic policy and the demise of the slate industry. A pluralist model of industrial relations operated at the Company from 1962 to the late 1990s. The financial pressure on the new owners showed potential for conflict at Friction Dynamics due to the litigation being taken against the new Directors. Nevertheless, the accounts of 1999 show that the Company was profit-making and viable.

The T&GWU became established in N Wales by the mergers with the NWQU and the Workers Union from 1922. Some prominent FTOs have ensured a continuation of membership and organisation in the area which has an historical consciousness of trade unionism. Under Bill Morris, Tom Jones and the local officials, those organising abilities would be put to the test in the dispute with FDL. However, as with most unions the T&GWU membership and power had dwindled since the 1970s, partly due to the legal restrictions on trade unions.

## **CHAPTER 4**

### **LEGAL BACKGROUND**

#### **4.1 INTRODUCTION**

This chapter considers the main areas of employment law before 2000, which had a major impact on the Friction Dynamics dispute. First, the individual labour law concerning unfair dismissal and the Employment Tribunal system. Second, some features of law governing industrial action, and third, the concept of protected industrial action. The analysis will concern the background to the law and the changes made by the Conservative governments from the 1980s leading up to Labour's Employment Relations Act 1999.

#### **4.2 UNFAIR DISMISSAL AND THE EMPLOYMENT TRIBUNAL SYSTEM**

Employment Tribunal decisions are influenced by UK primary and secondary legislation as well as Codes of Practice. European legislation, in the form of Treaty Articles (primary), Directives and Regulations (secondary), are normally implemented by Member States or occasionally enforced by decisions of the European Court of Justice (ECJ). However, the European Court of Human Rights (ECHR) has a separate jurisdiction from the ECJ (Finch and Fafinski 2007:14). The common law system of England and Wales allows judicial decisions to form binding precedents set by legal principles. Consequently, ETs are bound by decisions of the higher Employment Appeals Tribunal (EAT), Court of Appeal (CA) and the House of Lords (HL). Additionally, these courts must follow the legal guidelines from the ECJ. An ET decision can only be appealed to the EAT on the basis of either an 'error of law' or that the ET reached a

'perverse conclusion'. Further appeals can be brought to the CA or HL if permission is granted (Lewis and Sargeant 2000:4-5).

The superiority of European employment law was evidenced by the ECJ's interpretation and implementation of the Equal Treatment Directive 76/207 Article 6. The court required a sanction against an employer, as chosen by the Member State to give effective judicial protection. Consequently, the limits on compensation awarded to successful Applicants at ETs in the UK were removed by the government passing the Statutory Instrument 2798/1993 Sex Discrimination and Equal Pay (Remedial) Regulations 1993 and the Race Relations (Remedy) Act 1994 (Barnard 2006:35).

The contract of employment bestows legally enforceable obligations (Deakin and Morris 2005: 100), giving the impression of a fair balance between the legal rights of the employer and employee. However, most statutory rights require unbroken or continuous service, which has consequences for short time and casual workers (Anderman 2000:135).

The Employment Rights Act 1996 (ERA) as amended by Statutory Instrument 1999/1436 provides that one year of continuous service is required to qualify for unfair dismissal protection (Deakin and Morris 2005:188). For example, in *Booth v USA* [1997] EAT, Morrison held that maintenance workers on fixed term contracts covering a total period of over two years with deliberate two week gaps were disallowed from claiming unfair dismissal (Smith and Thomas 2005:191-2).

The ERA 1996 S.95.(1) establishes dismissal when: (a) the employer terminates the employee's contract, whether with or without notice; (b) the employer fails to renew a

fixed term contract under which the employee is employed; (c) the employee terminates his contract in circumstances entitling him to terminate it without notice by reason of the employer's conduct (Anderman 2000:153).

ERA 1996 Section 98 (1)(2) requires the Tribunal to test for fairness. The employer must show his reason for dismissal to fit one of the reasons categorised:

- (a) The capability or qualifications of the employee for performing work of the kind he was employed to do.
- (b) The conduct of the employee.
- (c) That the employee was redundant.
- (d) That the employee could not continue to work in the position he held without contravention of a statutory duty or restriction.
- (e) Some other substantial reason to justify the dismissal (Anderman 2000:157).

Once an unfair dismissal has been established, the Tribunal decides on a remedy. As specified in ERA 1996 S.112 the statute gives priority to reinstatement in the same job, or under Section 114 re-engagement with the same employer (Anderman 2000:175). However, an employer can refuse to re-employ, but instead pay an additional award of compensation amounting to between 26 and 52 weeks' pay, limited to a maximum of £50,000 (in 2000). Dismissals for either health and safety or protected disclosure reasons have no maximum limit. Compensation is calculated by using both 'basic' and 'compensatory' awards (Anderman 2000:176-7).

Dickens (1985:138-9) found that compensation tends to be awarded in the majority of successful cases, as Tribunals consider the employer's views as to the practicalities for

re-employment. However, there are no financial punitive measures taken against the employer. Low wages, short service, and a partial contribution to the dismissal by the worker oppress compensation levels. In 1982 only 11 percent of Applicants were awarded a remedy by a Tribunal hearing, but 32 percent gained a remedy through ACAS. Remedies over a decade showed reinstatement/re-engagement stood at only 4.4 percent in 1972, which reduced to 3.8 percent in 1982 (Dickens et al. 1985:108-9).

Employers may avoid paying compensation by going into administration. However, remuneration owed to employees is protected by the Insolvency Act 1986 and Part XII of the Employment Rights Act 1996 S.182, which allows payments from the Secretary of State. This transfers the risk to the government to reclaim the debt, but only covers a basic award and excludes the compensatory award element, so would be less than the amount payable by the employer (Smith and Thomas 2005:264-5). In such circumstances a Director may be investigated under the Company Directors Disqualification Act (CDDA) 1986.

Furthermore, Lyddon (2009:334-5) argued that delays in the legal system favour employers. For example, in October 1995 a strike at the Hillingdon Hospital, England, resulted in the dismissal of fifty-three workers for refusing to sign new contracts that cut pay and conditions. A settlement was agreed by Unison, but 31 pursued claims to an ET, with 21 gaining reinstatement or compensation in 1998, but not returning to work until October 2000.

### 4.3 INDUSTRIAL ACTION

The credible threat of industrial action by workers counters managerial power to enforce unilateral changes in working conditions. Therefore, legislation sets limitations in the exercise of industrial action, but accepts it as a legitimate defence against the imbalance of power between individual employees and employer.

Industrial action underpins collective bargaining, as employers are unlikely to negotiate with unions if this power is removed entirely (Anderman 2000:357-8).

Industrial action law has changed considerably since the historic judgement in the *Taff Vale Railway Co v Amalgamated Society of Railway Servants* [1901] HL exposing trade union funds to damages (Saville 1996:10). The Liberal government's Trade Disputes Act (TDA) 1906 gave complete immunity from action in tort, liability from conspiracy and inducement for breach of contract of employment for union officers and members, provided that they acted 'in contemplation or furtherance of a trade dispute'. Although known as the 'golden formula' (Smith and Thomas 2005:743), Hendy and Gall emphasised (2006:255) that this Act gave protection against judge-made law instead of providing a positive 'right to strike'.

The Labour government restored the 1906 statutory immunities in the Trade Union and Labour Relations Act 1974. However, the 1979 Conservative government believed that the TULRA 1974 and the 1976 Act created a legal framework for excessive secondary action and the freedom to strike over political as well as bargaining reasons (Anderman 2000:384). Their strategy, having experienced the failure of the 1971 Act, was to weaken trade union power through a step-by-step approach, resulting in several major Acts between 1980 and 1993.

There is no clear definition of 'lockout' or 'other industrial action', but strike action is described under Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992 S.246 as 'any concerted stoppage of work' (Smith and Thomas 2005:755). Section 219 provides immunity for trade unions and its officials only if industrial action has been authorised by a majority of members voting in favour, not more than four weeks beforehand. A ballot must be administered by an independent scrutineer and employers given at least seven days' notice of any action (Lewis and Sargeant 2000:399-401).

However, a Code of Practice exceeds the legislation by suggesting that agreed procedures should be exhausted and consideration given to dispute resolution via ACAS. Non-observance is taken into account when granting injunctions at the High Court (Deakin and Morris 2005:1021). The 'balance of convenience' test is used to consider the employer's loss if the action commenced, which is normally considerable in comparison to a union's. Also, 'damage to the public interest' as used in the *Associated British Ports v Transport and General Workers Union (TGWU)* [1989] CA. Between 1983 and 1996 there were 169 applications for injunctions; 137 were successful, and estimated costs to unions rose to £4 million between 1983 and 1998 (Deakin and Morris 2005:973). However, a successful strike ballot result from a union perspective can be a significant bargaining weapon in future negotiations.

The Employment Act 1980 and 1990 removed protection for most forms of secondary action, and only legitimises collective action at the enterprise level. The Employment Acts 1980 and 1982 substantially reduced the immunities for picketing, but TULRCA 1992 S.219.(1).(9) provides that an act done by a person in contemplation or

furtherance of a trade dispute shall not be actionable in tort on the grounds that it induces any other person to break a contract. Moreover, the Code of Practice restricts the number of pickets to six at an entrance to or exit from a workplace (Anderman 2000:385-6). J. Hendy QC (Interview 2009) felt that these numbers could be challenged successfully in the ECHR.

TULRCA 1992 S.237 states that 'an employee has no right to claim unfair dismissal if taking part in unofficial industrial action' (Anderman 2000:377). For example, in August 2005 at Heathrow, 667 Gate Gourmet workers were dismissed for refusing to sign new contracts on worsened terms and conditions, provoking a walkout in support by British Airways staff, costing the airline approximately £40 million. The T&GWU was unable to gain a satisfactory settlement and of 813 workers sacked, only 272 were reinstated and 411 given the equivalent of redundancy payments (Ewing 2006:250).

The complexities of legislation have caused financial difficulties for unions through huge costs on legal advice, conducting ballots and representation in court. The number of UK annual strikes in 1979 was 2080, dropping to 693 in 1989 before a further decline to 200 in 1999, revealing a considerable reduction in trade union power (Lyddon 2007:365). Nevertheless, the Labour government elected in 1997 refused to repeal the main principles of the Conservative legislation, but made some minor changes.

#### **4.4 PROTECTED INDUSTRIAL ACTION**

Although the legal immunities protect unions and officials they fail to protect individual workers. The fundamental obligation of an employee is to serve the



employer in accordance with the contract of employment; by taking strike action, the employee breaks the contract and is subject to dismissal (Anderman 200:360).

However, the orthodox view was challenged by Lord Denning M.R. in *Morgan v Fry* [1968] QB, where he suggested that “if adequate notice was given, as equal to a contractual notice period, that would give the effect of suspending the contract, not breaking it”. He argued that it would not make economic sense for a business to lose its entire workforce permanently because of a temporary dispute. Nevertheless, this concept was overturned by the repeal of the Conservative’s IRA 1971 in 1974, and was further suppressed in *Simmons v Hoover* [1977] EAT when Phillips claimed that there was no common law doctrine of suspension of contract by notice of strike action. This clarified the law that strike action was a breach and a valid reason for dismissal (Smith and Thomas 2005:749).

The position in relation to industrial action short of a strike is more problematic in *Secretary of State v ASLEF (No 2)* [1972] QB CA. The court held that co-ordinated action by workers to perform strictly to the rules amounted to a breach of contract by wilfully disrupting the employer’s business (Smith and Thomas 2005:750). These decisions appear to be logically inconsistent and could be described by Welch as judicial mystification of industrial relations (Ewing 2006:195).

The ERA 1999 S.238 provides that a dismissal will be automatically unfair if the action was lawful and the reason for dismissal is that the employee took part in ‘protected industrial action’, and one of the following applies:

- (a) The dismissal took place within eight weeks from the day that the employee took strike action.
- (b) The dismissal took place at the end of the eight week period, but the employee returned to work before the end of that period.
- (c) The employee was dismissed at the end of the eight week period, but the employer failed to take reasonable procedural steps to resolve the dispute.

Procedural steps defined by TULRCA 1992 S.238 A (5) (6) include both parties complying with the internal workplace procedural agreements on dispute resolution. Secondly, after commencement of industrial action either party had offered or agreed to resume negotiations or unreasonably refused a request to use conciliation or mediation services (Smith and Thomas 2005:753-4).

This legislation introduced by the Labour government would be first put to the test in the Friction Dynamics dispute. However, Smith and Thomas (2005:752-3) detected a number of loopholes in the protection; the individual striker would be unaware if the Union had successfully navigated the legal minefield governing industrial action. Secondly, the protection does not include 'detriment short of dismissal' allowing potential victimisation such as a striker being overlooked for promotion. If dismissals are selective after the protected period, the Tribunal considers the case in the usual way, so selective dismissal is not automatically unfair, unless the reason concerned trade union membership or activity.

Hendy and Gall show that the right to strike is contained within international treaties already ratified by the UK government. These include the ILO Convention No 87, and the European Social Charter, Article 6 (4), as well as the International Covenant on

Economic, Social and Cultural Rights 1966, Article 8 (l) (d) and guaranteed under the EU Charter of Fundamental Rights 2000. However, the latter is subject to national laws and practices, and many European nations legislate for 'suspension of the contract' during industrial action (Ewing 2006:259-60).

#### **4 .5 CONCLUSION**

Unfair dismissal legislation provides for the dominance of managerial prerogative in the employment relationship and places restrictions on justice via qualification periods. ET cases are notoriously difficult to win, while inadequate remedies fail to provide a deterrent to employers intent on administering harsh dismissals. The legislation introduced by successive Conservative governments since 1980 has considerably weakened the ability of trade unions to take industrial action, increased their costs substantially, and ultimately had a detrimental effect on labour movement solidarity through restrictions on secondary action. Much of the legislation is so restrictive in the UK that it breaches ILO Conventions and fundamental human rights. Some positive changes made by the Labour government in 1999 including the concept of 'protected industrial action' were considered as a first step by trade unions in re-addressing the balance in favour of workers. Moreover, such anti-union laws are specifically detrimental to UK workers, as the EU has failed to harmonise labour laws across all Member States.

## **CHAPTER 5**

### **RESEARCH DESIGN AND METHODS**

#### **5.1 INTRODUCTION**

This chapter explains the research design by covering four main themes. Firstly, documentary sources by analysing primary and secondary data. Secondly, a discussion of data collected through interviews, conducted by using relevant questions. Thirdly, difficulties encountered, including access to appropriate organisations, delays and lack of interviews, and fourthly, the reliability, validity, bias and independence of the research, including the limitations of the dissertation.

#### **5.2 DOCUMENTARY SOURCES**

The central question of the dissertation relates to issues of management strategy, union organisation, collective bargaining and both collective and individual employment law. This case study reflects the multi-disciplinary character of industrial relations, which often involves the techniques of archival work, interviews and surveys. For practical reasons the methods employed documentary evidence and semi-structured interviews. However, Duffy (cited in Bell 2008:122) argued that documentary sources can be used as the sole method of conducting research.

The selective use of documentation was essential to keep a focus on the most relevant and significant data in relation to the research question. The collection of valuable documents developed the project and the selection needed to be balanced to avoid supporting personal views (Bell 2008:128). Ideally, the data gathered would include a

wide coverage of both primary and secondary documentary sources, the former being written during the period under analysis and including diaries, minutes of meetings, Union minute books, management letters and Union correspondence. The latter, written after the event, would include annual reports, journal articles, court transcripts, staff magazines, Union journals and newspapers (Patmore 1998:219).

The location of documents may involve the local and national level of an organisation. For example, archive evidence of the Friction Dynamics legal case was retained at a Welsh regional office of Unite, while the policy documents and Executive Committee minutes were held at the Unite Head Office in London. Therefore, sufficient data covering the dispute was selected from the files in N Wales.

The internet was used to search for official government documents such as white papers, green papers, policy documents, legislation, and court case decisions (Bell 2008:124). Examples include Hansard parliamentary debates, BBC News reports, legal reports by various firms, details of the insolvency practitioner and extracts from the Employment Relations Act 2004. The Court judgements were ordered from the Tribunal Service for a reasonable fee.

Primary documents were collected from an archive at the Unite office in Bangor, N Wales. Examples include Company financial accounts, management notices, correspondence between Union and the Company, contracts of employment, ACAS meeting agendas, independent scrutineer's ballot result, and the closing submission to the Employment Tribunal. These provided the knowledge required to frame relevant questions for the interviews. The vast majority of research data collected was from primary documentary sources.

### 5.3 INTERVIEWS

Advantages of interviews include an opportunity for the interviewee to elaborate and clarify answers in comparison to a questionnaire. Seven people were interviewed due to time constraints of this research. Nevertheless, all were directly involved in the dispute, so valuable information was gained this way. Preparations for interviews required topics, questions and methods of analysis to be devised (Bell 2008:157).

Structured or semi-structured interviews enable responses to be ticked, and can easily be recorded and analysed. Unstructured interviews were not used in this research due to the disadvantage of additional time taken to analyse the information.

Tape recorded interviews, preferably on a one to one basis, enable replay several times to check the accuracy of comments and content analysis. The respondent may be inhibited or may refuse, but all the interviewees in this research were happy to be recorded. However, due to time constraints, tape recordings were not transcribed, but will be kept until after the dissertation is complete to prove accuracy. Whenever statements are quoted they should be verified with the respondent.

Interviews were held with four officials of the T&GWU, namely Gerald Parry (Branch Chairman), John Davis (Secretary of Strike Committee), Barry Williams (Shop Steward) and Tom Jones (District Secretary, North West Wales). Fortunately for me, all are fluently bilingual Welsh speakers, and the interviews were conducted in their second language of English. The interviews took place in Bangor on 2<sup>nd</sup> July 2009 under a semi-structured format which included 28 set questions. The level of co-operation and help from all concerned exceeded my expectations. For example, I was driven to the

home of Tom Jones by Gerald Parry because he was too ill to attend the office in Bangor.

The questions were designed to find specific answers on issues surrounding industrial relations at the plant. Some examples include the background of industrial conflict, issues of dispute, operation of the bargaining machinery, ACAS meetings, organisation of the strike and picket line, labour movement solidarity, and the ET case in Liverpool. Time was allowed for elaboration and some digression if considered useful and included the final question of "Anything else you wish to add?"

The above format was used in all the interviews, each of which lasted approximately 45 minutes and was recorded by a digital voice recorder. On 18<sup>th</sup> September 2009, I interviewed Paul Murphy MP, the Secretary of State for Wales, at his constituency office in Pontypool, Torfaen. Also, John Hendy QC, the representative of the dismissed strikers at the ET in Liverpool, at the Old Square Chambers, London on 29<sup>th</sup> September. Finally, on 28<sup>th</sup> October 2009, I interviewed Lord Morris of Handsworth at the House of Lords, Westminster, London.

#### **5.4 DIFFICULTIES ENCOUNTERED**

I was aware from the outset that conducting research in an area, industry and union I had little knowledge of, would present a number of immediate problems, particularly with access to both organisations involved in the dispute. The county of Gwynedd is predominantly a Welsh-speaking area, so a considerable amount of data would be in the Welsh language, including magazine articles and newspaper, radio and television

reports. The fact that these were not analysed provides recognition of the limitations of this research.

Friction Dynamics Ltd had gone into administration shortly after the ET decision, and was renamed Dynamex Friction. However, on 16<sup>th</sup> May 2009, I found that the latter company had also ceased trading in March 2006 (Thompsons 3.7.2008). I was unaware of this when the research topic was decided, and this meant I was unable to contact the Directors or Managers involved in the dispute. Although I attempted an internet search for "Craig Smith", this also proved unsuccessful.

The T&GWU also merged with Unite, and as I am not a member, and did not have a prior personal contact, gaining access was more difficult than anticipated. After telephone communication with the main Wales regional office in Cardiff, I sent an e-mail to Mr P MacNaught, the FTO for the Caernarfon area, on 2<sup>nd</sup> April 2009, and later another e-mail to Mr G Connelly, the Education Officer in Cardiff, on 20<sup>th</sup> April 2009.

I received a reply from Ms A. Owen of the Bangor office on 20<sup>th</sup> May 2009 and was given admittance to the office on 8<sup>th</sup> June 2009. I was kindly given access to the complete archive and copying machine, and selected a considerable amount of primary documentation, including evidence submitted by the lawyers for the Employment Tribunal case. However, the two months taken to gain access then delayed making appointments to conduct the interviews, due to time needed to read the documentation which formed the basis of the relevant questions.

On 15<sup>th</sup> July 2009 I wrote to Mr R Rutherford, the Administrator of Parkin S Booth & Co, and received a reply dated 4<sup>th</sup> August 2009 declining an interview. On 27<sup>th</sup> July



2009 I e-mailed the ACAS Cardiff office requesting a meeting with the Senior Conciliator, Mr David Burton, and found that he had retired. However, I received a reply on 8<sup>th</sup> October 2009 from Ms M. Bate in Cardiff, stating that despite several attempts being made by Mr H. Hopkin they were unable to contact Mr Burton. I also made enquiries with the former Reps in Bangor about the whereabouts of the former Directors and Manager Ken Godfrey, but was unable to obtain addresses or telephone numbers.

The lack of data presented by the above parties in either interview or documentary form may show the limitations of this research. The numerous telephone calls to relevant parties before gaining postal or e-mail addresses were time-consuming. Nevertheless, although the delays caused problems with my timetable this should not detract from the considerable quality of data made available for the final dissertation.

### **5.5 RELIABILITY, VALIDITY AND BIAS**

Reliability is the extent to which a procedure produces similar results on all occasions under constant conditions. Reliability can also be checked by tests and re-tests, or checking against other data, such as documentation showing the same result as an interview (Bell 2008:117). Validity can tell us whether an instrument measures what it is supposed to measure or describe. Supsford and Jupp (1996) take validity to mean whether the evidence of research can sustain the credibility of the interpretation given, which determines the conclusions drawn (Bell 2008:117-8).

Documentation can be divided into external and internal critical analysis. External criticism is intended to identify if the document is authentic and genuine. For

example, the author may be genuine but the report defective, and the letter needs to be consistent with the facts (Bell 2008:129-30). Internal criticism aims to analyse the specialised language used in particular fields such as legal terms in law reports to avoid misinterpretation. The documents also need to be considered for completeness and editing, as well as reliability and whether they support the views of a particular organisation such as a union or employer. Further, political bias, expertise and reputation would be assessed along with any gaps in the evidence which can show prejudice (Bell 2008:132).

Critical scholarship also analyses whether a document is biased or based on factual evidence, and whether such evidence supports the author's arguments. Nevertheless, the detection of biased material could reveal the true views of an organisation that can be valuable when compared with other sources. The focus on the truth, by assessing validity, is essential to prevent looking for evidence to support your own pre-conceived views. All material should be questioned with scepticism which will gain insights and knowledge, evolving into a habitual appreciation of the worthiness of the evidence (Bell 2008:133).

Newspaper reporters and editors need to make judgements on what events to report on, which tend to represent their own or the paper's prejudices. The researcher, due to the access and availability of relevant documentation needs to be sensitive to biases of the authors (Patmore 1998:21-2). While conducting research interviews, bias should be avoided by the questions being asked and distorting the information received. Additionally, it is necessary to check for overweighting of facts found in the research data (Bell 2008:167). As management could not be interviewed, possible bias

has been avoided by much greater use of the primary documents, including the ET case judgements that lay out the issues in a dispassionate way.

## **5.6 CONCLUSION**

This case study required the use of documentary sources and the conducting of interviews to accumulate the necessary data. Although a shortage of interviews may show some limitations, a wide variety of sufficient data was collected, providing considerable factual evidence to complete the study, resulting in a robust and balanced dissertation. Independently researching a topic in an unfamiliar area and industry may have mitigated against the possibility of personal bias. However, the initial lack of access caused some delays, but did not detract from finding truthful answers to the model of industrial relations and the legal framework that affected the dispute at Friction Dynamics Ltd.

## **CHAPTER 6**

### **PRESENTATION, ANALYSIS AND INTERPRETATION OF FINDINGS**

#### **6.1 INTRODUCTION**

This chapter will consist of six themes following a chronological order by summarising the main points found within primary and secondary data, and will refer back to previous chapters where necessary. Due to the nature of the dispute there will be overlapping of issues within the themes.

First, 'Industrial Relations', covering the relationship between management and unions including a change from a pluralist perspective to a unitary one, undermining the bargaining machinery and numerous disputed issues at plant level. Second, 'The Dispute', focusing on the development of the disputed issues elevated to the Full-time Officer, the strike ballot and union mass meetings. Third, 'Strike Action, Lockout and Dismissal', covering the organisation of the picket line, union solidarity and division, involvement of ACAS and dismissal. Fourth, 'The Employment Tribunal Cases', covers the Applicant submissions, decisions and remedy. Fifth, 'FDL Company Insolvency', containing the administration decision, the creation of a new company, further litigation and disqualification of Directors. Sixth, 'Employment Law Modification' will include the alterations in the Employment Relations Act 2004 and the failure of the government to support the Trade Union Freedom Bill. The conclusion will assess the root causes of the dispute, the perspective of industrial relations, and the failure of the law to protect workers in future.

## 6.2 INDUSTRIAL RELATIONS

Industrial relations were generally harmonious at the previous company Ferodo.

Disagreements were mainly resolved at local level without the need for intervention of the Full-time Officer (Interview Jones 2009). The T&GWU members had not had a pay rise for at least three years in the late 1990s, Barry Williams (Interview 2009) stating “there was no point going into dispute as the company was not performing well and we hoped there would be better times ahead”. This showed a pragmatic approach taken by the Union, despite inflation reducing the living standards of their members.

The Company was financially viable, as this was a condition of Welsh Assembly (WA) grants which were provided to the business (Interview Murphy 2009). Nevertheless, the change of ownership and considerable financial problems of Craig Smith (see Chapter 3.2) was likely to bring some desire for alterations in production methods at the renamed Friction Dynamics Ltd (FDL). These would need to be negotiated with the trade unions in accordance with the procedural agreements, Section 6 (Ferodo 1993).

The first signs of change occurred when the Company met the AEEU, MSF and T&GWU under the auspices of ACAS on 18<sup>th</sup> November 1999 to set up a Joint Works Council (JWC), with the common purpose to improve working relationships and ensure business success. Minutes of January, February and August 2000 showed that meetings were used to supply information on various items, including business transactions, casual labour, investors in people, productivity improvements, and plant modifications (see Appendix 1). This monthly forum did not supersede the bargaining machinery, so it was difficult to see how additional meetings could be cost-effective for the Company.

At the 5<sup>th</sup> September 2000 JWC, a major negotiable issue of a shorter working week was proposed, including a three-way thirty-six hour week, and improved productivity. This was enforced by the following statement: "Craig will carry out a 'presentation' to T&G members and the package would take effect from 1<sup>st</sup> October 2000" (see Appendix 2). This violated the procedural agreements relating to negotiations (Ferodo 1993). The irony here is that the JWC was intended to improve working relationships, but undermining the trade unions was likely to diminish trust and confidence with representatives.

The minutes of 3<sup>rd</sup> October 2000, Item Two, state, 'Three Day - Same - Pay Review': "It was confirmed that the TGWU voted against this package by 96 votes to three. Under item 3 'Manpower Planning', Craig gave a presentation on a two shift/five day pay package which will be instigated on 1<sup>st</sup> November 2000". The T&GWU representatives Barry Williams and Cyril Jacques argued that "this should be presented at a separate meeting". Surprisingly, no objections were recorded by the AEEU representatives E. and G. Williams, or L. Owen and D. Jones who were non-union employees (FDL 2000).

On 24<sup>th</sup> October 2000, FDL conveyed a unilateral management decision regarding Union activity to Mr Williams.

"Union representation on site will consist of four officials, inclusive of Secretary and Chairman (reduced by two) and both monthly Stewards and Branch meetings will be without pay (Godfrey 2000). The Branch Chairman Arnold Bohana received confirmation that :- (1) Branch meetings must now be held off site as from 1<sup>st</sup> January 2001. (2) Due to complexity of running

the payroll and demands on the staff, the company will not be deducting union subscriptions for the T&GWU as from the end of December 2000. (3) The format of the Health and Safety Committee will be changing; Craig Smith will be replacing Joe Rogers on the committee” (Godfrey 8.11.2000).

These decisions replicate the managerial tactics to destroy workplace trade unionism deployed over a century ago by the North Wales Quarry owners. Moreover, the above issues represent a clear move away from a pluralist perspective of industrial relations that existed previously to a radical unitary one (see Chapter 2.2). However, time would tell if these unilateral managerial methods would be ultimately successful for the Company.

The issues were elevated to the highest level of the machinery of negotiation on 13<sup>th</sup> December 2000 when a meeting with management was convened with Jim Hancock (Regional Secretary for Wales) and Tom Jones (District Secretary) along with the Shop Stewards. Agenda items consisted of demands and complaints of management rather than the issues of dispute (FDL 2000). “The T&G requested the re-introduction of the branch meetings, union dues etc.; all were denied. It was made clear that the management were tired of the leadership on this site would not negotiate with them and indeed would work around them” (see Appendix 3). On 14<sup>th</sup> December 2000 the T&GWU (Hancock 2000) confirmed to FDL the ‘failure to agree’ had exhausted the procedures, making the dispute official.

The complaints against Shop Stewards, particularly Barry Williams, persisted to the point of harassment. Such allegations included intimidating workers, vandalism and

organising unofficial overtime bans. Nevertheless, if workers were refusing to work overtime, it is more likely that the financial rewards were insufficient or they were expressing dissatisfaction with the Company. This could be described as a form of unorganised industrial action (see Chapter 2.4). However, the Regional Secretary informed the Company of the results of an unnecessary internal investigation.

“Regrettably therefore, because it would appear that the allegations are spurious, we will be unable to proceed with a regional inquiry” (Hancock 26.1.2001). This exonerated Barry Williams, suggesting malicious allegations were made because along with other officials he was effectively representing the views of the membership. John Hendy QC, later notified the Tribunal “that the messengers were to be shot for delivering their messages” (Hendy and Ford 2002:21).

### **Union Division**

On 16<sup>th</sup> January 2001 the JWC was disbanded and replaced with an Employee Council (EC) (see Appendix 4). On 30<sup>th</sup> January 2001 the Health and Safety Committee was altered without agreement of the T&GWU, which reduced their allocation of representatives, while the AEEU’s increased. Further, the Chairman posted a notice that day, giving an unrealistic timescale for trade unions to nominate health and safety representatives and to inform management by 1200 hrs on 2<sup>nd</sup> February 2001 (see Appendix 5). The AEEU and the MSF had seemingly undermined the T&GWU, as Barry Williams was notified that “the measures were discussed and voted on with two of the three unions recognised on this site” (Godfrey 31.1.2001).

Later that day, management removed Union facilities by instructing him to move his office to a smaller room in an unsuitable location without heating or telephone



provided. After objecting, Mr Williams (1.2.2001) was ordered to clear the room by 9<sup>th</sup> February 2001 (Godfrey 6.2.2001). On the 15<sup>th</sup> February 2001, following an EC meeting and posting of a special notice, redundancies were declared due to a lack of volunteers required to work three 12-hour shifts (Smith 2001). However, the T&GWU were not consulted, in breach of Section 5 'Security of Employment' in the Employee Handbook. Eventually, a meeting took place with the T&GWU on 20<sup>th</sup> February 2001 (Godfrey 21.2.2001), as the Company needed to comply with redundancy consultation in accordance with European Community Directive 75/129 (Barnard 20006:672-3).

### **6.3 THE DISPUTE**

Mr Williams (Interview 2009) disclosed that "a productivity target had been met on the imposed changes and workers were owed wages, but due to pulling out of the JWC the company refused to pay". The deal itself was in dispute as he would not sign a document because pay was not the remit of the EC. He felt Mr Godfrey started the dispute by constantly making unilateral changes including employing casual workers; introducing a two-shift system; ending continuous production; managers breaching demarcation lines to break contact with stewards, and ending payroll deductions for charities and social welfare. Gerald Parry (Interview 2009) differed: "Smith was behind Godfrey and there was a saying in the factory that if you say no to Craig Smith once you're finished".

Since the 'failure to agree' was recorded on 14<sup>th</sup> December 2000 the T&GWU would be considering their next step. At this stage there are normally two options; to call in ACAS or to ballot for industrial action. On 10<sup>th</sup> February 2001 a consultative ballot of the members was arranged by the FTO, Tom Jones, resulting in 81 voting in favour of

industrial action with only four members against (see Appendix 6). This led to a request to the leadership to arrange a ballot for industrial action, giving the official reasons as: (1) non-recognition of our union representatives; (2) total disregard for our agreed procedures; (3) Company unilaterally changed terms and conditions of employment (Jones 13.2.2001).

The Union notified the Company of the intention to ballot for industrial action, opening on 26<sup>th</sup> March 2001 and closing on 5<sup>th</sup> April 2001 (Jones 15.3.2001). Two questions were asked on the ballot papers: “Are you prepared to take part in strike action? Are you prepared to take part in industrial action short of a strike?” On a high turnout the members voted yes in support of both forms of action, by more than 90 percent (see Appendix 7 A/B).

A Branch meeting followed on 11<sup>th</sup> April 2001, where it was resolved that industrial action would commence on 23<sup>rd</sup> April 2001, in the form of a one week on and one week off strike. It was also decided that an overtime ban would commence from 30<sup>th</sup> April 2001 (T&GWU 2001). The overwhelming vote in favour of industrial action would put the Union in a strong bargaining position in any potential negotiations. On 12<sup>th</sup> April 2001 FDL were notified of the ballot result and strike action, but the FTO suggested further talks to resolve the dispute (Jones 2001).

The Company’s immediate response stated, “I remind you that any of your members taking part in industrial action repudiates his/her contract with FDL. I will communicate this to all your members so that they will be clear as to what repercussions their decision to take industrial action will have” (Godfrey 12.4.2001). Additionally, an ‘Employee Notice’ was posted threatening dismissal (see Appendix 8).

FDL (Godfrey 19.4.2001) complained that the notice of industrial action did not specify whether the intended action was 'continuous or discontinuous', failing to comply with Section 234 A of TULRA 1992. Consequently, the action was altered and clarified by the T&GWU: "This action will take the form of discontinuous strike action and commence on 30<sup>th</sup> April 2001 at 6.00 am and will last for one week and will continue every other week thereafter, for example, Monday 14<sup>th</sup> May for one week, Monday 28<sup>th</sup> May for one week etc. Also, there will be a continuous overtime ban as from 6 am on Monday 30<sup>th</sup> April" (Jones 21.4.2001). The legal complexities of industrial action only resulted in delaying the strike by a week, but probably antagonised the Union, and illustrate how the law exacerbates a dispute.

The Union mobilised support by urging all Manufacturing Sector Delegates to travel to Caernarfon to show solidarity with "our brothers and sisters in struggle" (see Appendix 9). However, the Company objected to the North Wales police in Caernarfon: "We sincerely hope that this strike will be peaceful, but for your information I attach correspondence which is self explanatory and suggests that there may be secondary picketing" (Rogers 26.4.2001). The T&GWU informed FDL on 1<sup>st</sup> May 2001 "that it is the policy of this union to respect the law" (Morris 1.5.2001).

Consequently, the Company requested a meeting, but with no real intention of settling the dispute. They requested the Union to be more specific regarding breach of agreements, to agree to the imposed terms and to accept a 'no strike clause' (Godfrey 24.4.2001). The management attitude was verified by an advertisement posted at the Caernarfon Job Centre regarding 'Urgent Vacancy for Temporary workers' (see Appendix 10). FDL appeared to be more interested in breaking the strike than

resolving it, but employing strike-breakers would also strengthen their bargaining power in future negotiations.

#### **6.4 STRIKE ACTION, LOCKOUT AND DISMISSAL**

The Company wrote to all the strikers individually on 1<sup>st</sup> May 2001: “You have taken industrial action and by doing so have repudiated your contract of employment. The company recognises and accepts your repudiation” (FDL 2001). This was contested by the FTO (Jones 14.5.2001) pointing out that “his members had not repudiated their contracts of employment as they were taking part in ‘protected industrial action’”, drawing attention to TULRA 1992 238 A. This was followed by individual letters by all the strikers to management (Appendix 11).

The strike-breakers provided an example of division in the closely-knit community, which also exposes an economic desperation due to the lack of decent employment opportunities in North West Wales. Nevertheless, replacing a loyal and experienced workforce with new casual workers brought its own problems, leading to further dismissal letters. “Accordingly, we will be informing these people that sadly we will no longer require them over the next two weeks” (see Appendix 12). There was no mention of additional training or the use of disciplinary procedures. Moreover, the presence and value of Shop Stewards to assist in the day to day production environment was being sorely missed.

Prior to the strike, FDL had imposed holidays (see Appendix 13) and again on 8, 9, 10 and 11 May 2001, which was the week in between the strike dates given by the Union (Godfrey 2.5.2001). This may have amounted to a ‘lockout’. However, the Union

responded by informing the Company that further discontinuous action would take place on each and every day of enforced holiday during the dispute, commencing at 6 am on 9<sup>th</sup> May 2001 (Jones 2.5.2001). More holidays were imposed in late May (Godfrey 7.5.2001) resulting in the workforce being out for four weeks continuously. This tactical battle seriously escalated the dispute and altered the lockout position.

The Union solicitors warned that the imposition of holidays was in breach of the Contract of Employment Section 2.3, the Employee Handbook Section 5.2, and a failure to pay a guaranteed payment amounted to an unlawful deduction within the meaning of Section 13 of the ERA 1996. Also, Section 5, 'Security of Employment', provides that employees laid off for part of the week will be paid a guaranteed payment within the meaning of Section 27 ERA 1996. Further, FDL's failure to respond positively will result in proceedings commencing in the ET (Walker, Smith and Way 23.5.2001).

Nevertheless, this had little effect, as more holidays were imposed in early June (Godfrey 24.5.2001). Mr Jones requested that the members be allowed to enter the premises, which was refused "As I have already stated to you, employees are not allowed on the premises during holidays or in this case while they are taking industrial action" (Godfrey 4.6.2001). At this point there was legal confusion on whether the workers were on strike, locked out, on holiday or dismissed.

### **Union and Community Solidarity and Division**

On 14<sup>th</sup> June 2001 FDL made further allegations of secondary picketing, citing CCTV evidence, and threatened to sue the T&GWU for damages under TULRA 1992 (Godfrey

2001). Members of the public and senior politicians were visiting the picket line, including Dafydd Wigly AM, Hywel Williams AM, Rhodri Morgan, First Minister of the Welsh Assembly government, and Paul Murphy, the Secretary of State for Wales. “They have all expressed support for our members and I ask whether you consider their attendance constitutes secondary picketing?” (Whitty 21.6.2001). Further complaints were made of “abusive language, intimidation, threatening behaviour and that an officer was observed to sound his horn and wave to the pickets” (Godfrey 1.8.2001). Gerald Parry (Interview 2009) confirmed that they had a fairly good relationship with the police, and after the complaint, they would silently flash the blue lights in support instead. This may have reflected the peaceful nature of the picket and some community sympathy for the strike.

The Company may have been referring to the numbers, as a Code of Practice restricts the quantity to six pickets (see Chapter 4.3), which requires reconsideration in light of the Human Rights Act (HRA) 1998. Moreover, ECHR Article 10 guarantees the right to freedom of expression, and Article 11 guarantees freedom of peaceful assembly (Deakin and Morris 2005 1030-31). John Hendy (Interview 2009) felt the restriction on numbers could be challenged successfully in the European Court of Human Rights. However, according to John Davis the police agreed to a maximum of twelve (Interview 2009).

On 7th July 2001 a march and rally of more than 1500 people took place in Caernarfon (Pritchard and Edwards 2005:83), strengthened by union branches from all over Britain. The strikers received thousands of letters of solidarity including from countries such as Switzerland, Belgium, Ireland, USA, Canada, Australia, Israel and New Zealand

(Pritchard and Edwards 2005:155-59). The picket was manned from 30<sup>th</sup> April 2001 until 19<sup>th</sup> December 2003 (Pritchard and Edwards 2005:151), and Hywel Williams MP believed it was the longest period for a picket line in British industrial history (Hansard 5.2.2004).

On 21<sup>st</sup> May 2001 the MSF Regional Officer complained to FDL concerning the constitution of the EC which had replaced the JWC, seeking the Company's commitment to MSF/AEEU representational and recognition arrangements, and assurances that the management was not encouraging employees to leave union membership. Further, they offered to mediate or assist in the present dispute with the T&GWU (Levington 21.5.2001). The Company needed to maintain reasonable industrial relations with the other unions to defeat the T&GWU, so re-affirmed FDL's agreement on union recognition. However, it asserted, "that the 15 percent reduction in pay that was agreed on a temporary basis would now remain in effect for an indefinite period" (Smith 20.6.2001). The AEEU and MSF members were now paying the price for failing to support the strike. Tom Jones felt "badly let down by the other two unions" (Interview 2009). This was reiterated by John Davies (Interview 2009) of the Strike Committee, recalling that a Dutch lorry driver had refused to cross the picket line, showing an act of solidarity far more impressive than some workers in the community.

## **ACAS**

After a few days on strike, the T&GWU reacted positively by calling in ACAS to resolve the dispute (Jones 3.5.2001). Conciliation is normally used instead of arbitration or mediation when there is a potential claim to an ET. The Conciliator works to find a

solution acceptable to both parties (Direct Gov 2009:1). Smith and Thomas (2005:58) point out that ACAS conciliation, if successful, would make considerable savings in costs, time and acrimony. Moreover, when lawyers become involved, the process of communication is lengthened and resolution becomes more difficult. During 2001/2, 1,270 collective conciliations were completed by ACAS with 92% ending with an agreed settlement or progress towards one.

The first ACAS meeting on 10<sup>th</sup> May 2001 was chaired by David Burton, a Senior Conciliator, who had helped to set up the FDL JWC. Two items were tabled by the T&GWU and eight by the Company to be discussed at a later meeting. However, the Union expressed disappointment when the Company cancelled the talks. "Please note that we consider that your actions constitute failure to take reasonable procedural steps to resolve the dispute" (see Appendix 14). They eventually met on 25<sup>th</sup> May 2001 where contentious issues were agreed to be discussed further when the redundant Shop Stewards A. Bohana and B. Williams (Burton 29.5.2001) were replaced by G. Parry and P.E. Milligan (Jones 31.5.2001).

The local politicians became concerned with the impact of the dispute on the local community, and Dafydd Wigley AM (22.5.2001) contacted C. Smith offering mediation. "I wrote to you on the 8<sup>th</sup> April and 9<sup>th</sup> May 2001 concerning recent developments at the factory in Caernarfon and had not received replies". The Company clarified their intentions: "Mr Smith feels there is nothing you could do practically to help the current situation. FDL has hired a new workforce and the business will carry on as usual" (MD Sec 30.5.2001).



## Dismissal

Additional meetings with ACAS on 12<sup>th</sup> and 14<sup>th</sup> June 2001 failed to reach a settlement. This was followed up by a letter to all individual strikers reminding them that they were now in week eight of the 'protected industrial action', and further, that they may lose this right depending on meetings with ACAS. "I ask you again to consider your position in relation to this dispute and return to work" (Godfrey 19.6.2001). Although this clearly undermined the talks, on the 19<sup>th</sup> June 2001 three main issues were discussed: (a) shift premiums for night working; (b) employee council and; (c) wage renegotiation. The Company refused to withdraw a 15 percent reduction in pay and confirmed that night working would be required of around half the workforce on a rotational basis. Most importantly, the Company stated that if the workforce were not back to work by 25<sup>th</sup> June they would not necessarily be dismissed (see Appendix 15). Nevertheless, on 22<sup>nd</sup> June 2001, Mr Godfrey (2001) informed all individual strikers: first, "the company does not accept that you have been taking protected industrial action"; second, "unless the company has received notification by 1400 on 26<sup>th</sup> June that you intend to report for work on 27<sup>th</sup> June 01, I regret to say that I will have no alternative but to dismiss you". Tom Jones (25.6.2001) replied:

"(1) We are of the opinion that your threat to dismiss your employees, who are members of the T&GWU, is unlawful. (2) We need clarification for all our members on the terms that you would allow them to return to work, as there is no clarification in your letter relating to the terms and conditions".

On 26<sup>th</sup> June 2001 Mr Jones informed ACAS that 87 T&GWU members voted unanimously not to return to work on Wed 27<sup>th</sup> June 2001 (Burton 27.6.2001) for the following reasons: (a) a 15% reduction in salary, (b) non-payment of shift premiums and (c) measured day work. Irrespective, FDL issued individual dismissal notices by recorded delivery effective from 28<sup>th</sup> June 2001. “We have already written to you saying that if you did not return to work you would be taken as having repudiated your contract. As a result it is with regret that your contract of employment with FDL is hereby terminated” (see Appendix 16). The difference of opinion in relation to the law would now be contested through the courts.

## **6.5 THE EMPLOYMENT TRIBUNAL CASES**

The unfair dismissal case (No 6500432-01) *Davis v Friction Dynamics Ltd* took place at the Employment Tribunal in Liverpool from 8<sup>th</sup> to 23<sup>rd</sup> October 2002. The panel consisted of the Chairman Mr E. Lloyd-Parry and Members Mr J. Burns and Mr D. Morris. John Hendy QC and Michael Ford QC acted on behalf of the Applicants and Mr J. Hand QC for the Respondents (Lloyd-Parry 18.12.2002:1). The closing submissions on behalf of the lead test case, Mr John Davis, were presented in three parts with an additional appendix.

### **Part 1: Dismissal by Letters Dated 1<sup>st</sup> May 2001**

The Applicants submit that Mr Davis:

1. was dismissed on 2<sup>nd</sup> May when he received the letter from the respondents dated 1<sup>st</sup> May 2001;

2. as at that date he was engaged in protected industrial action within the meaning of S.238A (1);
3. the dismissal occurred within eight weeks beginning with the date upon which Mr Davis started to take protected industrial action under S.238A (3) and was therefore automatically unfair; and
4. was not re-employed after that dismissal (Hendy and Ford 2002:2).

Three legal principles supported by previous cases were set out. First, “It is trite law that acceptance of the repudiation of a contract of employment terminates that contract just like any other contract”. Second, “an acceptance of repudiation must be clear, unequivocal and communicated to the repudiating party” and third, “once acceptance of a repudiation has been communicated it cannot be withdrawn” (Hendy and Ford 2002:3-4).

Application to fact included, “in accordance with common law rules the employees, including Mr Davis, by going on strike repudiated their contracts of employment”.

“The respondents then accepted that repudiation, with clear and unequivocal words, and communicated that acceptance”. “Though the meaning of the letter of 1<sup>st</sup> May is plain and no other material is strictly relevant or necessary, the point is reinforced when the letter is viewed against the background of the documents available to both parties” (Hendy and Ford 2002:4-5).

The Applicant’s legal team then interpreted ‘protected industrial action/unfair dismissal’. “It is that action of the employee – that is, the action which was the reason for dismissal – which must constitute ‘protected industrial action’ within the meaning of S.238 (1) if the employee is to benefit”. S.238 A (1) states that: “For the purposes of

this section the employee takes protected industrial action if he commits an act which, he is induced to commit by an act which by virtue of S.219 is not actionable in tort”.

They showed that the Union had complied with all the relevant laws governing industrial action including: Mr Davis was dismissed for breaching his contract of employment by taking part in industrial action; the employees were induced to commit that act by the T&GWU which called the strike and paid strike benefit; the inducement was in contemplation or furtherance of a trade dispute which falls within the categories of protected tort liabilities; the action had support of a ballot, and notice of industrial action was sent to the employer.

Consequently, at the time of his dismissal - 2<sup>nd</sup> May 2001 - within two days of the commencement of industrial action, Mr Davis was engaged in protected industrial action. Therefore, the dismissal was automatically unfair by virtue of S.238 A (3) (Hendy and Ford 2002:10-14).

## **Part 2: Dismissal by Letters Dated 27<sup>th</sup> June 2001**

The Applicants contended that Mr Davis was dismissed on the above date only if he was not dismissed on 2<sup>nd</sup> May and/or was re-employed thereafter. “If Mr Davis was dismissed on 2<sup>nd</sup> May and then re-employed on or after 8<sup>th</sup> May then the dismissal of 28<sup>th</sup> June was within eight weeks beginning with the day on which the employee started to take protected industrial action under S.238 A (3)” (Hendy and Ford 2002:19).

The T&GWU legal team also set out possible grounds for appeal by citing “that S.238 A (3) should be construed as set out above in order to comply with the ECHR under the

HRA 1998 and to give effect to the UK's treaty obligations in relation to the ILO and the Council of Europe's Social Charter" (Hendy and Ford 2002:20).

### **Breach of S.238 A (5)**

This law concerns the 'reasonable procedural steps' taken to resolve a dispute. Hendy and Ford (2002:20) contended that "in the alternative, if Mr Davis was not dismissed on the 2<sup>nd</sup> May 2001 or was re-engaged thereafter, he was engaged in protected industrial action at the time of his dismissal (28th June) and the Respondents failed to take such procedural steps as would have been reasonable for the purpose of S.238 A (5).

Factual evidence included: the Respondent's purpose was to be rid of the T&GWU; the intention was not to negotiate but work around the Union; various steps were taken to undermine the representatives, contractual agreements and procedural agreements; disbanding the JWC and imposing redundancies; refused mediation offers made by G. Williams and A. Rowlands of the AEEU; made unacceptable proposals, and failed to attend a meeting with ACAS (Hendy and Ford 2002:20-24).

### **Part 3: Holiday Pay**

A claim was also brought for Mr Davis loss of pay due to the imposition of holidays in breach of contract. The Employees Handbook Clauses 6 and 14 were cited to show an unlawful deduction of wages and a failure to pay guaranteed payments in accordance with Clause 5.2 of the Handbook or under S.28 of ERA (Hendy and Ford 2002:27-33).

## **Appendix 1: Issues of Credit**

This presented a conflict of fact, calling into question the integrity of Company representatives. “The Applicants contend that neither Craig Smith nor Ken Godfrey were credible or truthful witnesses”.

Mr Smith failed to produce documents in support of absurd claims, including: if casual operatives had joined the AEEU or MSF, terms would be modified; entitlement to reduce wages once industrial action commenced showing a bizarre construction of the employee’s contractual rights to pay; not to deduct subscriptions through the payroll was agreed by the T&GWU; the Company did not need to discuss redundancies with the T&GWU, and contradicted contemporaneous documents regarding the constitution of the Employee Council (Hendy and Ford App 2002:1-2).

Mr Godfrey deliberately altered a document, which the Applicants already had in their possession and which provided evidence of his fraud. He claimed that the Secretary wrote bingo, but when presented with her letter of denial he changed his mind, obviously lying to the Tribunal. He also made false representations of the Handbook regarding redundancies and the constitution of the Works Council (Hendy and Ford App 2002:2-3).

### **The Decision (18<sup>th</sup> December 2002)**

“The unanimous decision of the Tribunal is that the applicant was unfairly dismissed”. “The applicant said that the respondents unfairly dismissed him. He was dismissed while on strike during a period of protected industrial action. Thus the

dismissal was unfair by operation of law, automatically unfair.

If the dismissal were found to be outside the initial 8-week period, that period was extended because there were procedural steps the respondents ought reasonably to have taken to resolve the dispute” (see Appendix 17).

Many reasons, facts and legal arguments put forward by John Hendy QC were accepted. However, controversial comments made by the Tribunal Chairman did not balance with the facts. First, by praising Craig Smith despite substantial evidence of perjury, and second, through an invalid criticism of the Shop Steward Barry Williams, which epitomises a natural bias towards employers, reinforced by the law (see Chapter 4.2). However, Lloyd-Parry’s ignorance of industrial relations procedures and practices may not be unusual amongst the judiciary.

The Tribunal decision on a remedy was delayed as Mr Smith launched an appeal against the ET decision which was accepted by a judge at a preliminary hearing of the EAT in London (BBC 14.5.2003). However, due to insolvency this did not take place. Nevertheless, there was a different case, *Jones v Friction Dynamics and Others* [2006] EAT, which concerned dismissal of some workers on long-term sick leave. The original ET found frustration of contract by illness. However, the employee had recovered at the time the ET found frustration had occurred, resulting in the EAT reversing the decision (UKEAT/0428/06RN). This case further illustrates the attitude of the employer.

Mr Keenan, of Walker Smith and Way Solicitors, represented the Applicants at the ET remedy hearing in Liverpool on 23<sup>rd</sup> April 2004, where a decision was made on the

basis of the administration (Lloyd-Parry 2004:2). “At present, having regard to the respondent’s position, Mr Keenan realistically confined the claims to basic awards only. He reserved his position on the wider question of compensatory payments”. “We are not able to award the figure under “Notice Pay” since the only claim before us was for unfair dismissal”. An Appendix showed that the individual basic awards ranged from £7,200 for 39 years’ service (aged 59) to £4,200 for 17 years’ service (aged 42) (Lloyd-Parry 2004:3-6). These remarkably low payments fail to adequately compensate workers for losing their livelihoods, and would be unlikely to act as a deterrent to other law-breaking employers.

## **6.6 FDL COMPANY INSOLVENCY**

Mr Smith sought the advice of an accountant, who stated that the Company would become insolvent once the Tribunal made the compensation awards. The remaining workers would then be dismissed due to lack of funds. An administration order was granted from 7<sup>th</sup> August 2003, and one of the Administrators appointed was the above accountant. FDL ceased trading and the remaining employees were dismissed on 8<sup>th</sup> August 2003.

Soon after, a former FDL manager, Marc Jones, set up a new company Dynamex Friction Ltd, which acquired the production line and customers, while the machinery was sold to Ferotec which was owned by Craig Smith. Mr Smith bought a controlling shareholding in Dynamex Friction and then dismissed Mr Jones. The employees who were not taken on in the new company claimed unfair dismissal under the Transfer of Undertakings Protection of Employment Regulations (TUPE) 1981 (amended 2006),



where dismissals that can be shown to be by reason of, or connected to, the transfer are automatically unfair (Elbourne Michell 17.4.2008).

In *Dynamex Friction Ltd & Ferotec Realty Ltd v Amicus & Others* the Tribunal found that there had been a relevant transfer under TUPE, and the principal reason for the dismissals was an economic one due to the Company being unable to pay wages. No evidence of collusion was found between the Administrator, Mr R Rutherford of Parkin S Booth & Co, and Mr Smith, which allowed for the Tribunal's conclusion that the dismissals were unconnected to the transfer.

Amicus and the Secretary of State appealed the decision. The EAT differed by finding that "the Tribunal had failed to fully explain its reasons and had not made a finding of fact about whether Mr Smith had "stage managed" the whole process of administration to avoid TUPE, nor whether he had used the Administrator as his "unwitting tool" to avoid his obligations to pay compensation". However, the Court of Appeal held that the Tribunal had decided that the Administrator had become the "employer" at the time of the dismissals. Although he decided to sell the business he did not have a buyer until a week later. Consequently, the appeal was dismissed and the original Tribunal decision restored (Thompsons 3.7.2008).

Lord Justice Lawrence suggested that the issues in this case were adequately significant to be referred to the ECJ. Nevertheless, liability for the dismissals remained with the insolvent company, and again resulted in costs being paid by the state through the National Insurance Fund (Pinset Masons 28.5.2008:8-9). These legal cases may bring into question the fitness of Craig Smith to remain as a Director of a UK company.

## **Disqualification of Directors**

The Company Directors Disqualification Act (CDDA) 1986 provides punitive measures ranging from a disqualification period of between two and fifteen years. The central purpose of the CDDA is “to maintain the integrity of the business environment.

Directors should carry out their duties with responsibility and exercise adequate skill and care with proper regard to the interests of the company’s creditors and employees” (Insolvency Service 2009:1).

Courts can also make disqualification orders for ‘unfit conduct in insolvent companies’.

Schedule 1 ‘Matters for Determining Unfitness of Directors’, Part II 6: “The extent of the director’s responsibility for the causes of the company becoming insolvent”

(Statute Law 2009:28-29). This definition applies to Craig Smith, as his actions caused the demise of the Company, evidenced by the legal cases, and he is therefore liable under the Act.

The CDDA also provides a sanction against Directors convicted of health and safety offences. Research carried out by A. C. Neal and F. B. Wright at the University of Warwick in 2007 found that at least ten Directors had been disqualified for health and safety reasons since 1986. However, this low rate was due to a lack of awareness of such a powerful sanction amongst officials within both the Health and Safety Executive and local authorities (HSE 2005: V).

The imposed changes to the health and safety procedures appeared to be dangerous to employees, as the HSE served four improvement notices on FDL on the 3<sup>rd</sup> and 5<sup>th</sup> December 2001 (HSE 2001:1). A prohibition notice was served on 3<sup>rd</sup> December 2001

due to unguarded machinery resulting in the HSE successfully prosecuting FDL under the Health and Safety at Work Act 1974 Section 2 (1). On 28<sup>th</sup> June 2002 the Caernarfon Crown Court imposed a fine on the Company of £20,000 (see Appendix 18).

Questions were asked in parliament by Hancock MP regarding the disqualification of the FDL Directors, and were answered by Gerry Sutcliffe. “An insolvency practitioner has a duty to report to the Secretary of State for Trade and Industry on the conduct of the directors of that company usually within six months. Once the report is received it is reviewed by the Insolvency Service on whether disqualification proceedings are in the public interest. No report has been received” (Hansard 26.1.2004).

Lord (Bill) Morris of Handsworth (Interview 2009) believed that a change in the law was necessary to make Directors personally liable for compensation payments in circumstances where a company has been made insolvent to avoid those costs. Considering the above evidence, it is surprising that the various authorities failed to pursue disqualification proceedings against Craig Smith.

## **6.7 EMPLOYMENT LAW MODIFICATION**

The FDL dispute was the first to put the doctrine of ‘protected industrial action’ to the test. Bill Morris, the General Secretary of the T&GWU, said: “These dismissals demonstrate the inadequacies of the current law to protect workers engaged in official industrial action. We will be asking the government to bring forward a review of the legislation which events show provides no protection against anti-union employers”

(BBC 2.7.2001). As emphasised by the Secretary of State for Wales (Interview Murphy 2009), “the FDL strikers had his, and the full support of the Welsh labour movement”.

Nevertheless, in the absence of law-making powers at the Welsh Assembly government, the British Labour government would need to consider whether to transform, or simply modify the laws of industrial action/unfair dismissal. Only the latter was debated in the Employment Relations Bill 2004, which proposed minor changes to lengthen the standard protected period and extend it by adding for locked out days. Hywel Williams MP insisted that employers would still be able to sack the workforce after a 15-week protection period, while Lyons MP argued that protection should continue until the dispute was resolved (Hansard 5.2.2004). However, the Employment Relations Act 2004 (c. 24) Sub Section 7 was amended as follows:

“(7 A) For the purposes of this section “the protected period”, in relation to the dismissal of an employee, is the sum of the basic period and any extension period in relation to that employee.

(7 B) The basic period is twelve weeks beginning with the first day of protected industrial action.

(7 C) An extension period in relation to an employee is a period equal to the number of days falling on or after the first day of protected industrial action (but before the protected period ends) during the whole of any part of which the employee is locked out by the employer.

(7 D) In subsections (7 B) and (7 C), the “first day of protected industrial action” means the day on which the employee starts to take protected industrial action even if on that day he is locked out by the employer” (see Appendix 19).

These negligible changes reflect a missed opportunity to correct the law by the Labour government. First, the law does not prevent a pre-emptive lockout by the employer before the first day of ‘protected’ industrial action’. Second, an employer could sit out a dispute by attending meetings and then dismiss the strikers after twelve weeks. Third, employers may break the law and dismiss in the same way as FDL due to a lack of punitive measures. In order to prevent this, a Tribunal remedy of automatic reinstatement or re-engagement of unfairly dismissed workers would need to be enforced as a legal right (Deakin and Morris 2005:1075-6). Moreover, Hendy QC (Interview 2009) said that if secondary action was allowed by the delivery drivers, for example, the strike would have been over very quickly. This may have forced a compromise agreement and saved the plant.

Subsequently, a Trade Union Rights and Freedom Bill 2006 -07 supported by the Trade Union Congress (TUC) was introduced as a Private Members Bill by John McDonnell MP, and had received 187 MPs’ signatures by October 2006. The Bill fell way short of the government’s international obligations (see Chapter 4.4) and the freedoms granted by the Trade Dispute Act 1906 (Ewing 2006:259), but proposed improvements under eight sections. Section 1 ‘Protection of those participating in lawful industrial action or a lawful strike’ covered amendments under the following headings: 238 (A) ‘Effect of Industrial Action on the Employment Contract’; 238 (A.A) ‘Unfair Dismissal

and the Right not to Suffer a Detriment’; 238 (A.B) ‘Complaints to Employment Tribunals’ and 113 (A) ‘Automatic Re-instatement’. This Bill, if accepted, would have prevented other UK workforces from suffering the injustices experienced at Friction Dynamics (TUC 2006).

However, the Bill would need to go through five stages of the House of Commons and the House of Lords before receiving Royal Assent, and was presented on 13<sup>th</sup>

December 2006: “Column 891 Purposes: And the same was read the first time; and ordered to be read a second time on Friday 2<sup>nd</sup> March, and to be printed [Bill 32]”

(Parliamentary Business 3.10.2009). Paul Murphy MP confirmed that the Bill did not go beyond the first reading stage, because it was not given sufficient parliamentary time as it failed to attract government support (Roberts 15.10.2009). Gordon Brown has been reported to have said: “There will be no return to the 1970’s, 1980’s or 1990’s when it comes to union rights, and there can be no question of any re-introduction of secondary picketing rights” (Keter 5.11.2009). Such comments echo the emotive rhetoric of Thatcherism and fail to recognise the defects in the present law and injustices to workers. Yet the part of the Bill referring to limited solidarity action could have been amended to allow the other sections to succeed. Mr Murphy explained that the government were looking at some issues in the Bill that may become law (Interview 2009).

## **6.8 CONCLUSION**

First, the root cause of the FDL dispute was primarily the anti-union attitude of the employer Craig Smith, exacerbated by his financial problems, and his enforcing unilateral changes in production. The JWC was eventually substituted by an EC to

absurdly include non-union employees, intended to undermine the long-established bargaining machinery. This ensured a pluralist perspective of industrial relations was replaced with an extreme unitary one.

The official reasons of dispute were de-recognition of Union representatives, total disregard for bargaining procedures and unilateral changes to terms and conditions. The Union members, after suffering months of imposition and conflict, voted for industrial action by a huge majority and had no other alternative than to withdraw labour. The Company failed to make serious attempts to resolve the dispute through various parties including ACAS, due to their strategy to employ replacement labour.

The Union upheld the laws governing industrial action, while the Company broke the law governing the contracts of employment, health and safety and dismissals during the period of protected industrial action. The employees won the case of unfair dismissal, but the state failed to provide effective remedies. Craig Smith appeared to commit perjury and broke the law governing administration of insolvent companies. Yet the authorities failed to take action in the public interest.

The necessary legal changes covering industrial action and unfair dismissal required after one of the longest disputes in modern British industrial history were not implemented by the Labour government. The notion of protected industrial action actually leads the striker into a false sense of security because they have only a 0.1 percent chance of re-employment if dismissed. This represents a remarkable betrayal of British workers, trade unions and the wider labour movement by the most right-wing Labour government in British political history.

## **CHAPTER 7**

### **SUMMARY AND CONCLUSIONS**

#### **7.1 SUMMARY**

First, theories in the Literature Review Chapter emphasised how ‘industrial relations’ are affected by broader economic, social and political circumstances. The unitary perspective reinforced by a legal framework has dominated in the UK since the 1980s. Its opposition to collective relations results in the imposition of changes to workplace terms and conditions, causing inevitable industrial conflict. The pluralist perspective dominated state policy from the 1920s and accepts conflict as normal, and needing to be contained through the process of collective bargaining procedures. Some employers prefer to use this approach as the most effective method to implement productivity changes.

Second, an original purpose of unfair dismissal legislation was to reduce workplace strikes over dismissals. However, reinstatement has become so rare (0.1 percent in 2008/9) that it becomes almost theoretical in nature. Thus, the ET system continues to lose credibility as a fair judicial arrangement, as punitive measures or deterrents are virtually non-existent. This convinces unions to threaten or use industrial action to prevent unfair dismissal. An arbitration system may be an improvement on the Tribunal arrangement, but it cannot be as effective for workers as strong trade union representation.

Third, the fundamental human right to withdraw labour is taken as a last resort by workers on a temporary basis. Whether official, unofficial, organised or unorganised,



trade disputes have a major economic cost. An observed reduction in official strikes in the UK may indicate a move towards more unorganised or unofficial action which is more difficult to control and resolve, as demonstrated at the Lindsey Oil Refinery in 2009. However, the employer strategy of collective dismissal of strikers can only lead to substantial additional expenditure for the employer and state.

The empirical background of Ferodo Ltd shows that a pluralist model of industrial relations appeared to have operated from 1962 to 1999. Litigation involving Mr Smith, in the USA, put financial pressure on FDL, but the accounts confirmed that the Company was lucrative and viable as a going concern. The T&GWU amalgamation with the NWQU and Workers Union helped its establishment in N Wales, which has a deep-rooted consciousness of trade unionism. Some prominent FTOs ensured a continuation of organisation in Gwynedd, and under Bill Morris, Tom Jones and the local officials, the Union had considerable experience to deal with the dispute with FDL.

In the Legal Background Chapter evidence demonstrated how unfair dismissal legislation restricts applications and accepts the dominant position of the employer, making it extremely difficult for workers to win ET cases. The employer can refuse reinstatement, and inadequate compensation awards fail to provide justice.

Successive Conservative governments since 1980 have considerably weakened the power of trade unions to take industrial action, increased their costs substantially, and ultimately had a detrimental effect on labour movement solidarity through restrictions on secondary action. Some positive changes made by the Labour government in 1999 including the concept of 'protected industrial action' were considered as a first step by

trade unions in redressing the balance. Moreover, anti-union laws are specifically detrimental to UK workers as the EU fails to harmonise labour law across all Member States.

Research methods used for this case study included documentary sources and interviews. A wide range of sufficient factual evidence was collected in the form of primary documents, including legal judgements, to complete the analysis. The initial delays with access did not prevent finding truthful answers to the legal issues and how Friction Dynamics Ltd operated within the framework of industrial relations. External research of an industrial dispute in an unfamiliar geographical area, industry, company and union may have mitigated against the possibility of bias, hopefully resulting in a robust and balanced dissertation.

In the findings chapter, it was discovered firstly that industrial relations at FDL collapsed due to the Director's personal hostility towards organised trade unionism by creating a Joint Works Council intended to undermine the long established bargaining machinery. This resulted in deceitful attempts by management to negotiate items in breach of its constitution. Imposition of new terms and conditions, a fifteen percent pay cut, destruction of trust and confidence, redundancies and harassment of Trade Union officials were just some issues of conflict. Faced with such an onslaught the Union officials, particularly Shop Steward Barry Williams, made an outstanding contribution to the T&GWU.

Second, the discord developed after a breakdown in talks between senior Union Officers and Management. The official reasons of dispute were non-recognition of Union representatives, total disregard for agreed procedures, and unilateral changes

to terms and conditions. The experience of Jim Hancock, Tom Jones and the lay Union officials ensured that the members were organised into coherent action, expressed by an overwhelming vote in favour of industrial action by more than ninety percent.

Despite being threatened by the employer they exercised their human right to strike.

Third, I also noted the tremendous solidarity shown by the T&GWU members and sections of the community, verified by one of the lengthiest periods for a picket line in British industrial history. The T&GWU mobilised assistance across the Welsh, British and international trade union movement. However, division was caused by the catastrophic failure of the AEEU and MSF to join the strike even to protect their own members, exacerbated by casual workers crossing the picket line. Inevitably, with production continuing, the Company avoided a compromise through ACAS and were empowered to lockout and dismiss the strikers. The emergence of the new union Unite may diminish such damaging inter-union division in future.

Fourth, it was established that the Applicants won the Employment Tribunal case as they were found to be automatically unfairly dismissed. This was an important victory for the trade union movement, yet the only satisfactory outcome would be reinstatement. This was not achieved, despite the legal priority in the ERA 1996 Sections 112 and 114. The government only paid basic compensatory awards to the workers due to the insolvency of FDL. The Tribunal Chairman's comments did not always reflect the factual reality, and showed an ignorance of the function and responsibility of trade union representatives. A positive response of the state would be to provide industrial relations training via ACAS for all ET Chairmen.

Fifth, Mr Smith was responsible for the insolvency under the CDDA 1986, which is intended to protect the honesty of the business environment. The complicity of the authorities may result in a further decline of moral standards of Directors, as this case may encourage others to break the law. However, personal financial liability for Directors and powerful sanctions such as custodial sentences may improve compliance in future. It is unclear if *Dynamex Friction Ltd & Ferotec Realty Ltd v Amicus & Others* was referred to the ECJ. Questions regarding the actions of Mr Smith, the Accountant, the Administrator, and the Secretary of State for Trade and Industry remain unanswered. In the public interest these need to be investigated and resolved through a public enquiry.

Sixth, the Union were found to have complied with the complex laws governing industrial action, while the Company broke the law concerning the contracts of employment, health and safety and dismissals during the period of protected industrial action. However, only minor changes to the now discredited law of 'protected industrial action' were made regarding extending the protected period to 12 weeks and adding further locked out days. This law lulls workers into a false sense of security and can only function justly if dismissed strikers are automatically reinstated, re-employed on the same terms and conditions, or if compensation levels are without limits.

## **7.2 CONCLUSION**

The research findings raise more general questions in relation to trade union and government policy at Welsh, UK and EU level.

The bargaining arrangement at plant level isolated the T&GWU at FDL, as joint pay talks with other unions or multi-employer, regional or national bargaining could provide a broader unified strategy. Social ownership through worker co-operatives, which was successful at the Tower Colliery, may have provided a better use of taxpayers' money and kept the plant open. Unite may review their affiliation to the Labour Party or, preferably, seek a change of Labour Party Leader by supporting a candidate seeking a philosophical change from the calamitous failure of New Labour neo-liberal policies towards more progressive democratic socialist values. In the meantime Unite could challenge various aspects of UK labour law at the ECHR.

Welsh Assembly grants could become conditional upon trade union recognition along with compulsory industrial relations training for managers provided by ACAS.

Alternatively, public ownership with the WA selecting the management team may have saved millions of pounds in grants, compensation payments, unemployment and other social security benefits. Employment law-making powers for the WA could protect the workers of Wales from neo-liberal anti-union laws preserved or enacted at Westminster. This could replace the Anglo-Saxon freedom to strike with the Romano-Germanic tradition of the right to strike recognised in the European Social charter 1989, Article 13 (Barnard 2006:772).

The Friction Dynamics case shows remarkable similarities to the injustices experienced in the great N Wales quarry strikes over 100 years ago. The land-owning lord of yesteryear has been replaced by today's American tycoon. The employer's attempt to destroy workplace trade unionism resulted in the eventual closure of the plant to the detriment of the community. In total the picket lasted for two years, seven months

and twenty days, and the strikers were honoured by Caernarfon Town Council on 31<sup>st</sup> January 2004 (see Appendix 20). One of the longest disputes in modern British industrial history reveals that considerable legal reforms were needed.

This case demonstrated how the repressive Conservative-inspired UK labour laws provided overwhelming power to the employer and asserted control over workers. However, the real controversy here is that the Labour government failed to serve its purpose to enact legislation to protect the workforce, substantiated by the continuation of anti-union law and the elimination of the Trade Union Freedom Bill. Moreover, they have ensured that the employer strategy of 'collective dismissal' is likely to continue. This provides an immoral and historical low point when compared to previous Labour and Liberal governments, displaying a remarkable betrayal of the wider labour movement.

Finally, there are very good business reasons why firstly, Lord Denning held and secondly, the Conservatives legislated for the doctrine of 'suspension of the contract of employment' during strike action. The permanent collective dismissal of an entire workforce during a temporary dispute does not make economic sense for the employer, worker or state. Already established in other EU countries, reintroducing this law would make a positive step towards the UK fulfilling its international obligations on human rights, if not voluntarily, by enforcement of the European Union.

In the words of the Mayor of Caernarfon, Helen Gwyn: "Mae'r picedu drosodd, ond mae'r frwydyr am gwyfiawnder yn parhau" – "The picketing is over, but the battle for justice continues".

## **APPENDICES**

Appendix 1 FDL (23.11.1999) Preliminary JWC Meeting

Appendix 2 FDL (2000) Sept JWC Minutes

Appendix 3 FDL (13.12.2000) T&G Meeting Notes

Appendix 4 Smith (30.1.2001) Notice Employee Council

Appendix 5 Smith (2.2.2001) Notice H&S Committee

Appendix 6 T&GWU (10.2.2001) Branch Meeting Ballot

Appendix 7 A/B Electoral Reform Services (5.4.2001) Industrial Action Ballot Result

Appendix 8 FDL (12.4.2001) Notice Dismissal Warning

Appendix 9 Hancock (23.4.2001) FDL Union Busters

Appendix 10 Quick (25.4.2001) FDL Temporary Worker Vacancies

Appendix 11 Davis (15.5.2001) Letter to FDL Protected Industrial Action

Appendix 12 Godfrey (16.5.2001) Dismissing Temporary Workers

Appendix 13 Godfrey (26.4.2001) Imposition of Holidays

Appendix 14 Hancock (22.5.2001) Cancelled ACAS Meeting

Appendix 15 Burton (25.6.2001) ACAS Notes of Conciliation Meeting

Appendix 16 Godfrey (27.6.2001) Dismissal Letter to Strikers

Appendix 17 Lloyd-Parry (18.12.2002) ET Decision of Unfair Dismissal

Appendix 18 HSE (28.6.2002) Prosecution of FDL

Appendix 19 Statute Law Database (22.10.2009) Employment Relations Act 2004

Appendix 20 Caernarfon Town Council (31.1.2004) Honouring FDL Strikers

## **Photographs**

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