

ier briefing

The right to strike: Has the law moved on since the Friction Dynamics Dispute?

INTRODUCTION

The Friction Dynamics trade dispute in Caernarfon, North Wales was one of the longest running industrial conflicts in British history. The dispute became official in December 2000, the last legal case ended in the Court of Appeal in 2008 and the workers spent over two and a half years on a picket line.

The members of the Transport and General Workers Union (T&GWU, representing 190 of the 250 employees) voted for industrial action, but while on strike they were dismissed by the employer during a period of lawfully 'protected industrial action'. Consequently, the workers won an unfair dismissal case at an Employment Tribunal. The employer decided to appeal, but before the appeal hearing 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.

There are a number of important issues resulting from the litigation that have significant and far reaching consequences for the labour movement. In particular, how employment law surrounding the concept of 'protected industrial action' functions alongside unfair dismissal law and its affect on the ability of workers to exercise the human right to strike.

BACKGROUND TO THE DISPUTE

The original factory, Ferodo, was built on the Menai Straits, Caernarfon in 1961 and manufactured components for the motor trade. In 1997 the

company was re-named Friction Dynamics Ltd (FDL) and in 1999 received a £1m business grant from the Welsh Development Agency – making it a viable concern. But the change of ownership and the ongoing and dubious financial problems of Director Craig Smith, led to imposed productivity changes (contrary to agreements with the Amalgamated Engineering and Electrical Union (AEEU), the Manufacturing, Science and Finance Union (MSF) and the TGWU) and a drastic deterioration in industrial relations.

INDUSTRIAL RELATIONS

Under the auspices of the Advisory Arbitration and Conciliation Service (ACAS) on 18th November 1999, a Joint Works Council (JWC) was set up in addition to the existing bargaining machinery. At the 5th September 2000 JWC a shorter working week was proposed with 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 1st October 2000". This violated the procedural agreements relating to negotiations.

The minutes of 3rd October confirmed that the TGWU voted against this package by 96 votes to three. Management response was swift. On 24th October management unilaterally reduced union representation by two and asserted that both monthly Stewards and Branch meetings would be unpaid. In addition, the Branch Chairman, Arnold Bohana received confirmation that: (1) Branch meetings must now be held off site. (2) the company will not be deducting union subscriptions for the T&GWU. (3) The format of the Health and Safety Committee will be changing.

These unilateral decisions to destroy workplace trade unionism were discussed at a higher level meeting attended by Jim Hancock (Regional Secretary for Wales) and Tom Jones (District Secretary). "The T&G requested the re-introduction of the branch meetings, union dues etc., all were denied. It was made clear that the management would not negotiate with the Representatives". On 14th December the T&GWU confirmed a 'failure to agree', making the dispute official.

The company alleged that union officials were organising unofficial overtime bans but John Hendy

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QC later notified the Tribunal “that the messengers were to be shot for delivering their messages”.

On 16th January 2001 the JWC was disbanded and replaced with an Employee Council (EC), and on 30th January the Health and Safety Reps were reduced in number without the T&GWU’s agreement. Later that day management removed union facilities and Mr Williams was ordered to clear the room by 9th February.

Mr Williams felt management started the dispute by constantly making unilateral changes including “owing wages for a productivity target that had been met; employing casual workers; breaching demarcation lines to break contact with stewards and ending payroll deductions for charities and social welfare”.

Tom Jones arranged a consultative ballot for industrial action on 10th February 2001 resulting in 81 members voting in favour and four against. This led to a request to the T&GWU leadership for an official ballot due to:- (1) Non recognition of our union representatives. (2) Total disregard for our agreed procedures. (3) Company unilaterally changed terms and conditions of employment.

STRIKE ACTION

The union notified the company of the intention to ballot for industrial action, opening on the 26th March and closing on the 5th April 01. Two questions were asked on the ballot papers: - First, “Are you prepared to take part in strike action?” of which 91.09 % voted yes. Second, “Are you prepared to take part in industrial action short of a strike?” On a high turnout the members voted yes by 98.02 %.

Management’s response was to post a notice threatening to dismiss any strikers. Consequently, the T&GWU notified the company that “discontinuous strike action would commence on 30th April 2001 and will last for one week and will continue every other week thereafter. Also, there will be a continuous overtime ban as from Monday 30th April”. The legal complexities of industrial action resulted in delaying the strike 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 the members in struggle. However, the company complained to the North Wales police of potential secondary picketing. The T&GWU informed FDL on 1st May “that it is the policy of this union to respect the law”. Nevertheless, such laws were intended to defeat the union.

Consequently, the company requested a meeting, but demanded the union agree to the imposed terms and accept

a ‘no strike clause’. Management appeared to be more interested in breaking the strike than resolving it by advertising for temporary workers at the Caernarfon Jobcentre. However, employing strike breakers would also strengthen their bargaining power in future negotiations.

After the first day of action the company wrote to all strikers on 1st May 2001:- “You have taken industrial action and by doing so have repudiated your contract of employment. This was contested by the FTO quoting the law “that his members were taking part in ‘protected industrial action.’ This was followed by individual letters from the strikers to management.

LOCKOUT

Prior to the strike FDL had imposed holidays in between the strike dates given by the union. This may have amounted to a ‘lock out’. However, the union responded by informing the company that further strike days would take place on each day of any enforced holiday commencing on 9th May.

Walker Smith Way, the union solicitors, warned that the imposition of holidays was in breach of contract and a failure to pay a guaranteed payment amounted to an unlawful deduction under the Employment Rights Act 1996 Section 13. Further, FDL’s failure to respond positively would result in legal proceedings.

The members were prevented from entering the premises on days of imposed holidays. Godfrey stating “employees are not allowed on the premises during holidays or in this case while they are taking industrial action”. At this point there was legal confusion on whether the workers were on strike, on holidays, locked out or dismissed.

SOLIDARITY.....AND DIVISIONS

On 14th June FDL made further allegations of secondary picketing and threatened to sue the T&GWU for damages. However, 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 Government and Paul Murphy MP the Secretary of State for Wales.

A UK Code of Practice restricts the quantity to six pickets which requires reconsideration in light of the Human Rights Act (HRA) 1998. Moreover, the European Convention of Human Rights (ECHR) Article 10 guarantees the right to freedom of expression and Article 11 guarantees freedom of peaceful assembly John Hendy felt the restriction on numbers could be challenged successfully in the European Court of Human Rights.

Accordingly, John Davis said the police agreed to a maximum of twelve. Strike Committee organiser Gerald Parry confirmed





that the pickets had a good relationship with the police who would silently flash the blue lights in support. This may have reflected the peaceful nature of the picket and some community sympathy for the strike.

On 7th July 2001 a march and rally of more than 1500 people from all over Britain took place in Caernarfon. The strikers received thousands of letters of solidarity from trade unions all over the world. The picket line was manned from 30th April 2001 until 19th December 2003, in total for two years, seven months and twenty days. Hywel Williams MP believed it was the longest period for a picket line in British industrial history.

The strike breakers caused division in the closely knit community. This was re-iterated by John Davies 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. Nevertheless, replacing a loyal and experienced workforce with new casual workers brought its own problems leading to further dismissals. Moreover, the presence of shop stewards to assist in day to day production was being sorely missed.

CONCILIATION

The T&GWU called in ACAS to resolve the dispute noting that ACAS conciliation would make considerable savings in costs, time and acrimony in comparison to litigation. In 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 10th May 2001 was cancelled by the company. The union responded accordingly. "Please note that we consider that your actions constitute failure to take reasonable procedural steps to resolve the dispute". A further meeting was arranged when the redundant Shop Stewards A. Bohana and B Williams were replaced by G Parry and P.E Milligan.

The local politicians became concerned with the impact of the dispute on the local community and Dafydd Wigley AM made contact offering mediation. "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".

Two further meetings failed to reach a settlement and the company resorted to sending letters to strikers urging a return to work and reminding them that they were now in week eight of the 'protected industrial action'. On the 19th June the company refused to withdraw a 15 percent reduction in pay and confirmed that night working would be without premium

payments. Most importantly, that if the workforce were not back to work by 25th June they would not necessarily be dismissed.

DISMISSAL

Nevertheless, on 22nd June Mr Godfrey 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 26th June that you intend to report for work on 27th June 01, I will have no alternative but to dismiss you". Tom Jones replied :- (1) "We are of the opinion that your threat to dismiss your employees, is unlawful. (2) We need clarification on the terms and conditions that would apply".

On 26th June Mr Jones informed ACAS that 87 T&GWU members voted unanimously not to return to work on Wed 27th June 01 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 28th June 2001. "We have already written to you saying that if you did not return to work you would have repudiated your contract. As a result it is with regret that your contract of employment with FDL is hereby terminated.

The difference of opinion in relation to the law would now be contested through the courts.

THE EMPLOYMENT TRIBUNAL CASE, DECISION AND REMEDY

The unfair dismissal case *Davis v Friction Dynamics Ltd* took place at the Employment Tribunal in Liverpool from 8th to 23rd October 2002. John Hendy QC and Michael Ford acted on behalf of the strikers. The legal argument turned on two key questions: first, when were the strikers dismissed and second, did their dismissal breach the limited protection offered to strikers under UK laws? Under the Employment Relations Act 1999 (ERA), introduced by the Labour Government, strikers were protected from dismissal during the first 8 weeks of any dispute. As the barristers argued, if the strikers were dismissed on 2nd May, the day they received the letter from Friction Dynamics dated 1st May, then they were sacked within the eight weeks protected industrial action period and were therefore automatically unfairly dismissed. The Tribunal agreed.

"The unanimous decision of the Tribunal (on 18th December 2002) is that the applicant was unfairly dismissed. Mr. Davis was dismissed while on strike during a period of protected industrial action. Further, If the dismissal was 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".

The Tribunal decision on a 'remedy' was delayed as Mr Smith launched an appeal to the Employment Appeals Tribunal. However, due to insolvency this did not take place. Having won their case of unfair dismissal, the sacked workers expected compensation. However, by going into administration in August 2003, Mr Smith managed to avoid paying any money to the workers he had unfairly sacked. Even worse, a new company, Dynamex Friction, run by Marc Jones, a former manager at the Friction Dynamics plant, began production on the site two weeks later using some of the assets of the old Friction Dynamics company but employing several dozen new workers and paying Craig Smith, the owner of the site, around £25,000 a month in rent!

Eventually, Walker Smith Way Solicitors, represented the unfairly dismissed workers at a Tribunal remedy hearing in

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Liverpool on 23rd April 2004, where, due to the company being in administration, the claim was realistically confined to basic awards only, averaging around £5,200 per person. These remarkably low payments failed to adequately compensate workers for losing their livelihoods and were unlikely to act as a deterrent to other law breaking employers.

EMPLOYMENT LAW MODIFICATION

The FDL dispute was the first to put the notion of 'protected industrial action' to the test. Bill Morris the T&GWU General Secretary 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 review the legislation". Nevertheless the British Labour government missed the point and failed to reform the laws of industrial action/unfair dismissal. Only minor changes were made to the Employment Relations Act 2004 (c. 24) Sub Section 7. This lengthened the standard protected period from eight to twelve weeks and extended it further by adding for locked out days.

However, firstly, the law does not prevent a pre-emptive lockout by the employer before the first day of 'protected industrial action'. Secondly, an employer can sit out a dispute by attending meetings and then dismiss the strikers after twelve weeks. Thirdly, employers may break the law, dismiss workers and then claim insolvency to avoid liability. In order to prevent dismissals the protection period should last for the duration of the dispute. If dismissals take place within that period a Tribunal remedy of automatic re-instatement, re-engagement on the same pay and conditions or unlimited financial compensation needs to be enforced.

CONCLUSION

Industrial relations collapsed at FDL due to the Director's hostility towards organised trade unionism. The official reasons for the dispute were non-recognition of union representatives, total disregard for agreed procedures and unilateral changes to terms and conditions. After an overwhelming vote in favour of industrial action and despite being threatened by the employer, workers exercised their human right to strike. The T&GWU mobilised support across the international trade union movement. However, the catastrophic failure of the AEEU and MSF to join the strike was exacerbated by casual workers crossing the picket line. Inevitably, with production continuing the company avoided a compromise through ACAS and was empowered to lockout and dismiss the strikers.

The union complied with the UK's complex laws governing industrial action, while the company broke numerous laws. The Friction Dynamics case shows how the imbalance of employment law assisted the employer's attempt to destroy workplace trade unionism which resulted in the eventual

closure of the plant to the detriment of the community. The strikers received substantial support from the community and were honoured by Caernarfon Town Council on 31st January 2004 for their tremendous act of solidarity in the face of injustice.

The Tribunal decision was an important victory for the trade union movement, yet the only satisfactory outcome – re-instatement – was denied them. Even without insolvency, re-instatement is so rare that it has become almost theoretical in nature and the ET system continues to lose credibility as a fair judicial arrangement. The government only paid basic compensatory awards to the workers due to the insolvency of FDL. Mr Smith was responsible under the Company Directors Disqualification Act 1986, yet the authorities failed to take action. However, personal liability for Directors who break the law would ensure the payment of compensation.

One of the longest disputes in British industrial history revealed that considerable legal reforms were needed but only minor changes were made to the defective law on 'protected industrial action'. However, the real controversy is that the Labour government failed to serve its political purpose to enact legislation to protect workers. Through retaining Conservative inspired anti union law and failing to support the Trade Union Freedom Bill, it corroborated with its historical opponents by ensuring that the employer strategy of 'collective dismissal' continued. Finally, the permanent collective dismissal of an entire workforce in the heat of a temporary dispute does not make economic sense for the employer, worker or state. That is why the most important reform to the law in recognition of this case would be the suspension of the contract of employment during strike action. Already established in other EU countries, such a law would constitute a positive step towards the UK fulfilling its international obligations on human rights.

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.

Bryan Davies



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He graduated with a Master of Arts Degree in Industrial Relations and Employment Law at Keele University in 2010, completing a research dissertation on the Friction Dynamics trade dispute (www.ier.org.uk/our-work/friction-dynamics-dispute).

This Briefing is a summary of that report

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