



JUDICIARY OF
ENGLAND AND WALES

21 DECEMBER 2012

THE HON MR JUSTICE UNDERHILL

NATIONAL UNION OF MINeworkERS V SCARGILL

HIGH COURT (CHANCERY DIVISION)

SUMMARY OF REASONS

This is a summary, taken from the full judgment of Mr Justice Underhill, of the reasons for his decision that the NUM is not obliged to pay the rent and other outgoings of Mr Scargill's flat in the Barbican following his retirement.

- (1) Mr Scargill's predecessors as Presidents of the NUM all had houses bought for them by the Union in or near London which they were entitled to occupy not only during their office but after retirement (with the right extending to any widow), either at a very low rent or (on retirement) by buying the property at a very reduced price. That may seem to today's eyes a very generous benefit; but it was of long standing and was within the Union's Rules.
- (2) That benefit appeared in Mr Scargill's first written contract in 1982, but it was not at that stage taken up. However, the National Executive Committee did agree to pay the rent (and other outgoings) on a flat of which he became the tenant, on the Barbican estate, which is fairly near the then Union headquarters in London.
- (3) Mr Scargill says that having the Union pay the rent on the Barbican flat was understood to be a replacement for the benefit given to his predecessors as described at (1), and therefore was also a lifetime benefit. I have rejected this argument for a variety of reasons, including: that the original minutes of the NEC from 1982 do not say that; that it is not what the original contract which he signed says; that the Yorkshire Area went on subsidising the mortgage on his home in Yorkshire, which he

retained; and that it was known at the time of his election that the Union might well shortly be moving its headquarters outside London (as it in fact did). I have found that it is more likely that the understanding at that time was that the payment of the rent of the Barbican flat was in the nature of a facility to enable Mr Scargill to do his job properly and that he retained the right in due course to have a house bought for him by the Union.

- (4) My conclusion about that is supported by the fact that in 1984 the Union appeared to agree to buy Mr Scargill's house in Yorkshire, on the basis that it would remain his home. Mr Scargill says that that was part of a plan to protect the properties of the Union and its officials from sequestration during the 1984/5 strike; and in the event it did not go ahead. Nevertheless it was described at the time and subsequently as being in accordance with normal practice and Mr Scargill's contractual rights.
- (5) The Union did not in fact pay the rent on the Barbican flat between 1985 and 1991. But I have found that in 1991 Mr Scargill decided that he did not want to take up the benefit to which he had been entitled since 1982 – that is, of having a house bought for him – but instead wanted the Union to resume paying the rent on the flat and to continue to do so into his retirement.
- (6) What he should then have done was to go back to the NEC and seek their authority for that arrangement, since it was not what had been agreed so far. But he chose not to do so. Instead, he obtained, on his own initiative and without involving the NEC, legal advice which supported his right to have the Union pay for the Barbican flat (though it did not deal with whether the right would continue into retirement) and told the Finance Department to resume the payments on that basis. He also in 1992 signed a contract, which was renewed in 1999 and 2002, which said that the Union would pay the costs of the flat until his death (and that of any widow). He obtained legal advice in support of the most recent of those contracts.
- (7) Although Mr Scargill claims otherwise, the process of drafting the contracts and obtaining the legal advice, which should have been on an arm's-length basis, was done entirely on his initiative and under his control. None of this was disclosed to the NEC.

The legal advice was based on information provided by him which did not give the full picture; and anyway it could not make up for the absence of NEC authorisation.

- (8) Therefore, when Mr Scargill retired in 2002, the contract which appeared to give him the right to have the Union continue to pay the rent on the Barbican flat was not effective because the NEC had never approved his having any such right.
- (9) Without the knowledge or agreement of the NEC the Union continued to pay the rent on the Barbican flat following Mr Scargill's retirement. When the question was first raised in the NEC in 2008/2009, no decision was reached to approve the contract retrospectively.

This summary has been prepared for the benefit of members of the Union and others, in view of the likely interest in the case. It is not a substitute for the Judge's full judgment, which will be promulgated shortly, as soon as the parties have had the opportunity to propose editorial corrections. That judgment will also contain his reasoning on the other issues in the case, which are (comparatively) less significant.