

Chapter 11

The Superannuation Trustee: Are Fiduciary Obligations and Standards Appropriate?

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1 The Mineworkers' Pension Fund

When Arthur Scargill, the controversial British union leader, addressed the court as an unrepresented defendant in the celebrated case of *Cowan v Scargill*,¹ he argued that the mineworkers' pension scheme at the centre of the dispute 'might be subject to different rules' from those applied to traditional trusts.²

Mr Scargill and the four other defendants in the case were union appointed trustees on a 10-member Board of trustees that controlled a pension scheme established for mineworkers. The other five trustees were appointed by the National Coal Board. The trustees had the power to act by a majority but there was no provision for a casting vote in the event of deadlock. The scheme provided pensions and lump sum payments for mineworkers on retirement. It also provided for payments to widows and children of members. Funds were contributed to the scheme by the Board and the mineworkers and, at the relevant time, their respective contributions were in the proportion of about 2:1. The trustees had wide powers of investment and had developed a practice of preparing investment plans for several years at a time.

In 1985, the union trustees, led by Mr Scargill, sought to prevent the pension scheme from investing in non-UK companies and companies that competed with the coal industry. The trustees appointed by the Board, argued that this was not in the interests of the members because it restricted the scope of possible investment. With a deadlocked Board and no casting vote, the matter ultimately came before the courts.

Mr Scargill, of course, was neither a lawyer nor a superannuation professional and he was unable to persuade the presiding judge, Sir Robert Megarry, that different rules should apply to pension trusts. In his analysis of the relevant law the Vice-Chancellor said:

1 [1985] Ch 270.

2 Ibid 275.

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