

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN V. RYAN, JR.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 97-604 GMS
)	
ASBESTOS WORKERS UNION)	
LOCAL 42 PENSION FUND; ASBESTOS)	
WORKERS LOCAL 42 PENSION PLAN,)	
and TRUSTEES OF PENSION PLAN, as)	
PLAN ADMINISTRATOR OF LOCAL 42)	
PENSION PLAN,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On April 4, 2000, the court granted John Ryan Jr.'s ("Ryan") motion for summary judgment. However, the court declined to award Ryan attorney's fees. Upon reconsideration, the court will now award Ryan reasonable attorney's fees.

II. BACKGROUND

Ryan is a former member of a union of asbestos workers and a participant in that union's pension plan. Between 1955 and 1996, he earned a total of twenty-five years worth of vesting credit while working for the union over two different time periods. Between 1955 and 1969, Ryan earned fourteen years worth of vesting credit. For the next thirteen years, between 1970 and 1982, Ryan worked outside the industry, and thus, experienced a "break in service." Toward the end of this thirteen-year period, Ryan returned to

work for the union. Although he did not work long enough to earn any vesting credit in 1983, he did earn another eleven years of vesting credit for his service between 1984 and 1996.

Ryan then retired and applied for benefits under the pension plan because he had earned a total of twenty-five years of vesting credit since beginning work in 1955. While the administrators of the pension plan paid Ryan's benefits, they did so at two different pay levels pursuant to an earlier amendment to the plan.

This amendment created a two-tier system. Specifically, it provided that any participant who leaves the plan only to later return may receive two different levels of pension benefits depending on the length of that person's absence. Even though the amendment itself was adopted in 1983, it was deemed effective in 1981. In addition, by its very terms, the amendment applies only to those participants who experience more than a ten-year break in service before returning to the plan. It thus applied to Ryan, who had experienced a thirteen-year break at the time the plan was adopted.

Ryan filed suit against the administrators of his former union's pension plan. On April 4, 2000, the court granted Ryan's motion for summary judgment. It denied reconsideration on August 25, 2000. On September 25, 2000, the defendants filed a notice of appeal. The Court of Appeals for the Third Circuit affirmed the district court's summary judgment order on January 24, 2002. It remanded this case to the district court, however, to specifically address the five factors relevant to any award of attorney's fees.

III. DISCUSSION

It is within the court's discretion to grant or deny a motion for attorney's fees. *See Ursic v. Mines*, 719 F.2d 674, 675 (3d Cir. 1983). In determining whether to award fees under ERISA, courts consider the following five policy factors: (1) the offending parties' culpability or bad faith; (2) the ability of the offending parties to satisfy an award of attorney's fees; (3) the deterrent effect of an award of attorney's

fees against the offending parties; (4) the benefit conferred on members of the pension plan as a whole; and (5) the relative merits of the parties' position. *See id.* at 673.

1. Culpability or Bad Faith

The first *Ursic* factor the court must address is whether the offending parties acted in bad faith or in a culpable manner. *See Ursic*, 719 F.2d at 673. A party is not culpable merely because it did not prevail in litigation. *See McPherson v. Employees' Pension Plan of America Re-Insurance Co.*, 33 F.3d 253, 257 (3d Cir. 1994). However, a party may be culpable if the act or conduct in question is reprehensible or wrong. *See id.*

On the present facts, the court finds that the defendants' actions rise to a culpable level. The amendment to Ryan's plan retroactively reduced the level of his pension benefits in violation of ERISA Section 204(g) by effectively freezing those benefits at two different levels. In its April 4, 2000 decision, the court found that, by applying this amendment to Ryan, the administrators abused their discretion since he had already experienced more than a ten-year break in service at the time the amendment was adopted. The administrators' actions thus retroactively punished Ryan for his lengthy absence from the union, before he had any reason to believe that his absence would have this repercussion. Such actions on the part of the defendants were clearly reprehensible. Accordingly, this factor weighs in favor of granting attorney's fees.

2. Ability of the Offending Party to Satisfy an Award of Attorney's Fees

The court finds no record evidence that the pension fund in question is insolvent, or that requiring it to pay the attorney's fees would make it so. Accordingly, absent any showing of hardship to the defendants, the court finds that this factor favors granting attorney's fees.

3. Deterrent Effect of an Award of Attorney's Fees Against the Offending Parties

The objectives of ERISA are furthered if fee awards are employed to deter culpable behavior. *See McPherson*, 33 F.3d at 257. Insofar as the court found that the administrators abused their discretion by retroactively applying the amendment, an award of attorney's fees should deter the pension fund administrators from abusing their discretion in the future. Thus, this factor weighs in favor of granting attorney's fees.

4. Benefit Conferred on Members of the Pension Plan as a Whole

The court's ruling that the amendment did not apply retroactively to situations such as Ryan's certainly conferred a substantial benefit on members of the pension plan as a whole. It is doubtful that Ryan was the only similarly situated member negatively affected by the administrators' actions. Accordingly, this factor weighs in favor of granting attorney's fees.

5. Relative Merits of the Parties' Positions

There is no evidence that the defendants litigated this matter in bad faith. Furthermore, the court recognizes that the defense counsel had a duty to zealously advocate for their clients. *See id.* at 258. Finally, the theories advanced by the defense were not frivolous. Thus, although the defendants' theories did not ultimately prevail, it would be improper to conclude that this factor weighs in favor of granting Ryan's motion for attorney's fees.

IV. CONCLUSION

Thus, the court finds that four out of the five *Ursic* factors support an award of attorney's fees. Accordingly, upon reconsideration, and after carefully weighing and balancing each factor, the court concludes that Ryan's motion for attorney's fees should be granted.

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The court will award reasonable attorney's fees to counsel for the Plaintiff; and
2. Counsel for the Plaintiff will submit to the court, within thirty (30) days of the date of this order, a request for the specific amount of attorney's fees sought, with the relevant supporting documentation attached.

Date: January 31, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE