

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3755
No. 92-3875
Summary Calendar

LAWRENCE D. TRAHAN
and
ROSE MARIE TRAHAN,

Plaintiffs-Appellees,
Cross-Appellants,

VERSUS

RITA F. AINSWORTH,
Substituted for Deceased, THOMAS M. LOCKWOOD,
In Her Official Capacity as Administrator
of the Baton Rouge Sheet Metal Workers Pension Plan
and
THE BOARD OF TRUSTEES OF THE
BATON ROUGE SHEET METAL WORKERS PENSION PLAN, Etc., et al.,
Defendants-Appellants,
Cross-Appellees.

Appeals from the United States District Court
for the Middle District of Louisiana
(CA-89-433-B-M1)

(March 1, 1993)

Before HIGGINBOTHAM, SMITH, AND DEMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

In this case involving application of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

1001 *et seq.*, Lawrence Trahan claims that he was improperly denied early retirement benefits upon his retirement. The district court granted summary judgment in favor of the defendant pension plan officials but denied their request for attorney's fees. The defendants appeal the denial of attorney's fees, and Trahan and his wife appeal the denial of benefits. Finding no error, we affirm.

I.

A.

Section 5.04 of the subject pension plan provides, in relevant part, that "[r]etirement . . . shall mean complete withdrawal by an Employee from any of the following: . . . Self-employment in the same or related business as any contributing Employer" The plan trustees made the factual determination that Trahan, in contravention of section 5.04, in fact was employed at a place of business called "Trahan Sheet Metal."

Numerous facts supported this finding. For example, an inquiry with the Occupational License Office for the Parish of East Baton Rouge established that Trahan was listed as the proprietor of Trahan Sheet Metal. Trahan's federal and state income tax returns showed him to be self-employed at Trahan Sheet Metal. Mrs. Trahan admitted that Trahan customarily spent his days at that location and regularly drove around in a company pickup truck with a sign reading "Trahan Sheet Metal."

Our review of trustees' factual determinations is only for abuse of discretion. *Pierre v. Conn. Gen. Life Ins. Co.*, 932 F.2d 1552, 1562 (5th Cir.), *cert. denied*, 112 S. Ct. 453 (1991). Under this standard, we easily uphold the trustees' decision as supported by ample evidence that Trahan was self-employed and thus ineligible for early retirement benefits.

B.

The trustees interpreted section 5.04, as well as section 6.06, to require a plan participant, as a condition of eligibility for benefits, to withdraw from employment in the sheet metal industry. Where, as here, the plan empowers the trustees to "interpret the Plan and . . . determine all questions arising in the administration, interpretation, and application of the Plan," the standard of review applicable to challenges to denials of benefits based upon plan interpretations is the arbitrary and capricious standard. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989).

Trahan argues that article 5.04 cannot apply to him because, under the plan, in order to be in retirement one actually must be receiving retirement benefits; Trahan never received such benefits. Thus, he reasons that he was permitted to engage in outside employment in the sheet metal industry during such time as he was not receiving benefits. As the defendants state, "the interpretation urged herein by the Trahans would allow such an otherwise eligible sheet metal worker to draw pension benefit

payments simply because he possesses the requisite years of service, and regardless of whether or not that worker was engaged in active employment within the sheet metal industry at the time those payments commenced."

The trustees, on the other hand, interpreted sections 5.04 and 6.06 to require, as a condition of eligibility for benefits, that a plan participant withdraw from employment within the sheet metal industry. We view this interpretation as anything but arbitrary and capricious, as it merely recognizes that pension benefits are payable, under the subject plan, only to otherwise eligible sheet metal workers who are no longer working at their trade. Accordingly, we affirm the district court's denial of benefits as expressed in its grant of summary judgment.

II.

The defendants challenge the district court's denial of attorney's fees to them under section 502(g) of ERISA, 29 U.S.C. § 1132(g). The factors we consider are, *inter alia*, (1) the degree of the opposing party's culpability or bad faith; (2) the ability of the opposing party to pay any fee awarded; (3) whether an award of fees could deter other persons prospectively; (4) whether the fee claimant sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA; and (5) the relative merits of the respondent's position. *Iron Workers Local No. 272 v. Bowen*, 624 F.2d 1255, 1266 (5th Cir. 1980). We review a denial of fees

under an abuse of discretion standard. *Id.*

We see no reason to disturb the district court's conclusion that no fees are called for in this case. While it is apparent that Trahan's claim, and his repeated efforts at litigation, are the results of a long-standing grudge against various union officials, his arguments regarding the interpretation of the plan are not plainly in bad faith. Although this would be a close question if we were reviewing it *de novo*, we cannot conclude that the district court abused its discretion in refusing to award attorney's fees to the defendants.

The judgment is AFFIRMED.