

Council of Civil Service Unions v Minister for the Civil Service [1985] 1 AC 374

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This article deals with an important English case that highlights a problem, relevant today in Australia also around the issue of non-statutory executive powers, that permits the executive to ignore natural justice requirements on the pretext of national security. In this case, the Prime Minister of England, Baroness Thatcher, used reasons associated with national security as a basis for excluding union representation for GCHQ staff. This case is but one case that raises questions associated with the proper use of non-statutory executive powers (also known as the 'prerogative powers').

Natural justice can be excluded with certain matters associated national security – national security never fails! The General Communications Headquarters ('GCHQ') that was engaged in eavesdropping/ use of electronic listening/ surveillance devices as part of its function as a secret intelligence service in the UK. The main function of the GCHQ, apparently was to ensure the security of military and official communications and to provide Govt with signals intelligence, which involves handling of secret information obtained through all sorts of electronic eavesdropping etc ways, necessary for national security.

For reasons of national security, the UK Government prohibited GCHQ staff members from joining the union. National security won out on the basis that Thatcher (who was also the Respondent Minister for Civil Service, and PM) claimed that any prior consultation with the unions about the decision to give them the boot, would involve a risk of precipitating disruption at GCHQ and 'bring out the vulnerability of areas of operation to those who had shown themselves ready to organise disruption'.

Even though it is a UK case, I thought I'd mention it because it is really quite interesting on a number of levels. A fine (maybe not the right word) example of the way that national security reasons can be used to remove important/ fundamental protections of procedural fairness. Some might argue that national security reasons were being used to weaken the unions for political reasons. We all know that Margaret Thatcher had tremendous battles with trade unions during her time as PM. Some might see this as another plank in her struggle for dominance over an organisation she feared and loathed – especially when it comes to having them around secret intelligence.