

Have spoken to

Employment: This

will provide an  
effect Mr Prior's Bill

PRIME MINISTER would have  
on current dispute.

Pm's Minister

Shah I try to get the  
clarifications suggested at X  
on page 2 in time for E Committee?

12.14/1

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Mr. Prior's paper on trade union immunities is due to be discussed by E Committee on Tuesday. At our dinner last Thursday you agreed that the Employment Bill before the House was only the first phase in a series of measures to reform the trade unions. The minutes of E Committee's discussion on 27 September record Mr. Prior as saying:

"The choice lay between limiting trade union immunity from suit to contracts of employment, or extending them to breaches of other contracts. This extension would have the effect of stopping all secondary action. There is no need for a decision on this point immediately. It would be wise to await the decision of the House of Lords in the MacShane case, and to see whether the CBI attitude developed further."

His latest paper argues that the main measure of reform should remain the restriction of immunities over picketing, contained in the Employment Bill. He recognises that immunity for other forms of action now needs some limitation and proposes to give statutory effect to the position as it was largely understood to be before the MacShane judgement - that the immunities should extend to action at the first customer, first supplier and the first provider of services, but not beyond.

This proposal is the minimum possible response to the MacShane judgement. It could be argued that the need to restrict the immunities in any case, coupled with the vivid reminder of their extent provided by the steel dispute, gives us an opportunity to take a bigger step now in what must be a long series of steps (not all of which will involve legal changes) in this whole field. We are not experts, but the most obvious alternative would be to give a right of action to anyone who is not party to a primary dispute. Mr. Prior finds three "compelling objections" to this (paragraph 5 of his paper). When reading those we must remember that the immunities enjoyed by British trade unions do not exist for their counterparts in any of our successful competitors. Against a sensible Standard, none of these objections has real substance, though it is no doubt true that a proper reform would produce a howl of anguish. But is it really unreasonable that any employee who is not party to a dispute should be able to seek some protection?

As most  
argues  
similarly  
TL

Another approach would be to restrict the immunity to inducing breaches of contract of employment. For this to be effective in protecting employers against secondary action, it would need to be made clear that immunity did not extend to either direct or indirect measures to induce breach of commercial contract. I understand that this was a point of much confusion prior to 1971.

\* When would only "compel" a Trade Unionist or  
D of Emp. Official / There are

\* Whether or not "contaminated"  
by contractual links.

There are many other possible approaches. The provisions in the Employment Bill on picketing and Mr. Prior's latest proposal are all directed towards restricting the immunities for individuals, not trade unions themselves. This means that employers will be able to seek injunctions, but are effectively prevented from seeking damages because individuals would be unable to pay costs or damages. Many of our supporters would argue that the immunities of the trade unions themselves need to be restricted if they are to be made more responsible for unofficial action. However you may feel that E Committee generally accepted the Secretary of State for Employment's view that it would be courting too great a confrontation to make this change.

It has also been suggested that the immunities could be linked to circumstances. For example, it would be possible to confer immunity only in cases where strike action was preceded by 60 days notice, or a secret ballot, or by a complete exhaustion of procedure agreements. This approach would have the effect of obliging trade unions to take responsibility for preventing unofficial disputes. Again, it may be best to make this kind of change later.

We suggest that unless you feel satisfied that last September's E Committee ruled out fuller reforms at this stage, Mr. Prior should be asked to enlarge upon some alternative approaches to the restriction of immunities so they can be properly discussed. Once the present changes have been made there will be strong pressure from some quarters to give them several years in which to be tested. How long can we afford to wait? At the very least a discussion now of the alternative approaches might be used to extract a clearer perception of the problem and a commitment from Cabinet doves to move again sooner rather than later.

X  
Attorney

We also feel that Mr. Prior's paper does not make sufficiently clear the impact of his proposals on recent cases. For example, participants in the present dispute would retain immunity to induce employees of a steel stockholder who is a first customer of BSC to refuse to handle steel from a private sector source. Immunities would remain for attempts to induce railwaymen\* to black steel. The same would be true for drivers whose employer had a contractual relationship with BSC. We suggest you should ask the ~~Secretary~~ General to provide examples of the effect of Mr. Prior's proposals in the steel dispute and one or two other prominent cases.

Finally, paragraph 14 of the annex to Mr. Prior's paper briefly considers changing the statutory definition of a trade dispute, thus withdrawing immunity from a wide range of recognition and demarcation disputes. We think colleagues should have a chance to consider the implications of this more fully.



John Hoskyns

11 January 1980

\* assuming BR have contracts  
with B.S.C.