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PM asked to see this reply

pm's thought

A negative response. But it is hard to see how employers could be compelled not to dismiss their employees. The main compensation seems the only way of dealing with this problem.

The Rt Hon George Younger MP
Secretary of State
Scottish Office
Dover House
LONDON SW1

no

Ken Cochrane

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Flag A Thank you for your further letter of 5 March.

I fully share your concern about the developing situation in Scotland. I still believe, for the reasons I have given, that the Employment Bill will provide adequate protection in the circumstances you outline and that, properly presented and publicised, will give the assurances that employees need. The Code will help further.

In my view your own proposal would not work. As I understand it, you wish to prevent employers from dismissing, in accordance with a union membership agreement, an employee expelled from his union for continuing to undertake essential public services contrary to union instructions during a strike. Presumably, you intend that the individual should be able to seek an injunction to prevent the employer dismissing him in these circumstances or to seek an order of reinstatement with which the employer would be compelled to comply.

This approach would be unprecedented and would have profound implications. So far as I am aware, nowhere in the civil law is there any provision under which an employer can be compelled to employ or continue to employ an individual. The law does not give the employee an absolute assurance that he will not be dismissed. What it does is to assure him that if he is unfairly dismissed under the terms of the law, he will be entitled to compensation.

This has been the approach on unfair dismissals since the 1971 Act first introduced that protection and it has been adopted for very sound reasons. Suppose an employer is compelled to keep on an employee in the circumstances you have in mind. What does the employer do if his other employees then refuse to work with that person and thereby threaten the essential services that you desire to maintain? The employee's position can be made insupportable and the employer's position untenable.

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Even if we were to seek to introduce and apply this totally new concept in labour law - which would have incidentally to be a completely new clause in the Employment Bill - I very much doubt whether we could limit it to the circumstances you have in mind. If employers can be compelled to keep or reinstate employees in one set of circumstances, there would be very considerable pressures to extend this obligation to other cases of unfair dismissal. I need hardly say that this would be exceedingly unpopular with employers.

We have to recognise that this is as much a matter of will - certainly with public sector employers - as of law. You say that under the terms of their UMAs some local authorities may have to dismiss those who maintain essential services during a strike and are expelled from their union as a result. There is, however, generally no absolute obligation of this kind: as you know, collective agreements of this sort are not normally legally binding and, if an employer party to a UMA finds that the UMA is working against his own or, in the case of local authorities, the public interest, there is nothing to stop his repudiating the offending part of the UMA or indeed the whole of the UMA. There are notable examples where employers both inside and outside the public services have done this.

Of course, some local authorities may be determined to be perverse and may not be unwilling to dismiss those union members covered by a UMA who had helped them to maintain essential services during a strike. In that event the employees concerned will have the protection of clauses 3 or 6 of the Employment Bill together with the Code of Practice in the way I outlined in my last letter. This will not guarantee them their jobs but it will put financial pressure on the local authority to retain them and in the last resort a local authority is going to have to reckon with public opinion.

Like you, I believe that we must do all we can to provide assurances to all employees in closed shops that they cannot be unreasonably treated because they refuse to take part in strike action. I also agree that we must do whatever we can, by law or otherwise, to strengthen the resolve of local authority employers. The Bill as it stands and the Code when it is produced will go a long way in this direction. I cannot agree to go beyond it in the way that you propose because this would introduce into labour legislation a totally novel obligation on employers which in my view is open to objection in principle as well as being quite impractical to operate.

I hope therefore you will agree that we should firmly adhere to the approach the Government have so far adopted in this area. I personally believe that we have got the balance of the present Bill about right and I would not want to see this balance put at risk. Of course, if on further consideration you and the Chancellor would still like to discuss the issue with me I would be happy to do so.

I am sending copies of this letter to the recipients of yours.

W. G. ...
[Handwritten signature]

14 MAR 1980

