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cc Mr Wolfson

Seen by PS

PS/All Ministers
PS/Secretary
Mr Burgh
Mr Latchum
Mr Morris
Mr Simpson
Mr Lane

From the Secretary of State

The Rt Hon James Prior MP
Secretary of State for Employment
Department of Employment
Caxton House
Tothill Street
London, SW1N 9NA

11 January 1980

Dear Secretary of State,

TRADE UNION IMMUNITIES

I have read your paper for discussion at E Committee on 15 January. I hope it will be helpful to you and to colleagues if I let you know in advance the points I hope to make, not least in the light of the Nawala judgement.

I agree that our starting-point should be our manifesto commitment that:

> "the protection of the law should be available to those not concerned in a dispute."

I believe we should do our best to redeem this pledge in full. On picketing, this is what our measures are designed to do; but on blacking, although your proposal would restore the law to what it was understood to be before the Lords judgement in the MacShane case, it would still leave unprotected first suppliers and first cutomers who were innocent of any involvement in a dispute. And it would also leave unprotected employers and employees who, as in the Nawala case, had no dispute with one another, but who became the joint victims of blacking by a trade union intent on imposing its policies on them.

From the Secretary of State

I accept of course your argument that we must tread carefully, and strive to hold and improve our advantage over the TUC in the battle for public support. In seeking to protect the right of those not concerned in disputes to go about their lawful business in peace, I believe we shall do so.

I therefore suggest that we should consider allowing immunity to run only in the event of:-

(i) action by (or on behalf) of the employees of the employer against whom the action is taken;

(ii) or of past employees of that employer if the action is a protest against their sacking;

(iii) an employer involved himself in a dispute to which another employer is party by giving material support to the other employer.

This would ensure that immunity did not extend to assaults of the Nawala type, while avoiding the criticism that we were helping employers who gave material help to other employers in dispute, or removing immunity from secondary action against dismissals which made primary action impossible.

On the SLADE case our consultative document said we considered it unacceptable that the law provided "no remedy for someone whose business or livelihood was threatened with destruction by the application of economic pressure through industrial action taken by employees of another company" where the purpose was union recruitment. The same action for a different purpose seems equally unacceptable.

From the Secretary of State

I also hope we can ensure that, however far we extend the protection of the law, we can reduce the risk of such protection being nullified. I understand that officials have discussed possible devices, arising out of the present statutory definition of a "dispute", which unions might use to disguise secondary blacking as primary action so as to retain immunity in whatever areas we seek to remove it. I hope we can block such loopholes.

On the Nawala case itself, I want to stress the potentially serious consequences for our international shipping policy. These are set out in your paper and need not be repeated, but I must emphasise their importance. Our resistance to protectionist moves, highly damaging to our world-wide trading interests, is difficult enough as it is without having ground to cut from under our feet by our own domestic practices. If we conclude that it is impossible to adopt a general approach to immunities which would cover Nawala-type difficulties, then I feel that the shipping policy consequences of the Nawala judgement fully warrant an appropriate exclusion from immunity for shipping alone.

On points of detail, you will be aware that in the Nawala case at some stage a Norwegian crew had been discharged. As I have made clear above, I would be content to leave immunity where there was a dispute between the present employer and a dismissed workforce, for example if UK seamen lose their jobs in favour of lower-cost labour. But I should emphasise that this type of crew-change will affect only a small minority of the ships visiting our ports with crew paid below ITF rates. The shipping policy issues are therefore unaffected. I note Lord Denning's comment that blacking is the sole resort available to the ITF: this takes no account of the scope for legitimate primary action by the crew if they feel they have a grievance.

From the Secretary of State

The Prime Minister has already in her Weekend World interview on 6 January linked the Nawala case with the MacShane judgement as matters to be dealt with. There is unlikely ever to be a more appropriate time than now.

I therefore hope that you and colleagues will agree to legislative action, preferably in the general form I have suggested above but failing that, in a form specific to shipping.

I am sending copies of this letter to the Prime Minister, E Committee colleagues, the Lord Chancellor, the Attorney General and Sir Robert Armstrong.

Yours Sincerely,

Nicholas McInnes

JOHN NOTT

(Approved by the Secretary of State and signed in his absence.)