



cc Wolfson

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

Switchboard 01-213 XXXX

Rt Hon Sir Geoffrey Howe QC MP
 Chancellor of the Exchequer
 Treasury Department
 Great George Street
 LONDON SW1

19 February 1980

Thank you for your comments on the draft as set out in your minute of 15 February to the Prime Minister.

This working paper is all about industrial action "in furtherance" and the immunity given by Section 13. Putting union funds at risk does not therefore fit in here and I do not think it wise to threaten what we are a long way from deciding to do. I have, however, inserted into paragraph 12 of the paper an intimation that we have not necessarily said the last word on picketing if abuses continue and I have also, in meeting your separate point about the Green Paper in the review, made plain in paragraph 21 that our continuing review is of the law on "trade union" immunities, which indicates that it will cover the question of union (as well as individual) liability.

The amendment you suggested to paragraph 16 of the draft is not consistent with the agreed policy. It would have the effect of limiting immunity to action affecting commercial contracts to which the employer in dispute is a party. Apart from giving limited immunity to blacking, this would have the effect of virtually banning secondary action. It was an approach identified in the paper before us at E on 13 February as a variant of option 2 (E(80)4, paragraphs 13-14) which was not adopted.

I have taken up suggestions (iii) and (iv) of your minute with the Home Secretary and the Lord Chancellor respectively. Both advise that it is not desirable to include anything on either point in the working paper or in my accompanying statement. If either matter is raised with me I shall, of course, say that we have these matters under consideration and I shall certainly publicise the clause on criminal offences in the course of picketing if it is finally decided, after the agreed consultation, to introduce this into the Bill.

I am circulating copies of this letter to all concerned under cover of a minute to the Prime Minister conveying the working paper as it is to be published tomorrow.



cc W 5/80

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

Switchboard 01-213 3000

Rt Hon John Nott MP
Secretary of State for Trade
Department of Trade
1 Victoria Street
LONDON SW1

16 February 1980

See file

WORKING PAPER ON SECONDARY INDUSTRIAL ACTION

Thank you for your letter of 15 February commenting on the draft paper.

The final version of the paper meets your second point, but your suggestion in relation to Nawala is not in accord with what we have agreed to do. Although there was no dispute between the owners of the Nawala and their Hong Kong crew, there was a dispute between the owners and the International Transport Federation which came within the definition of "trade dispute" in Section 29 of the 1974 Act (as the House of Lords subsequently confirmed). The only certain way of removing immunity from disputes between an employer and a trade union which do not involve that employer's employees would be to redefine "trade dispute". That would take us much wider than the Nawala case and we have certainly not agreed to do that. Insofar as your suggested amendment is designed to have similar effect, it seems to take us back to an approach (Option 4) which was specifically considered and rejected at E on 16 February.

I hope, however, it is understood that, under the proposals in the working paper, a shipowner in a Nawala-type situation might be protected in two ways. First, if the employers of the dockers or tugmen taking the blacking action were not "substantial" first suppliers or services to the shipowner, then their action would not attract immunity. Secondly - and this could be either alternatively or additionally - a court might consider the action taken by the ITF was mainly for a motive extraneous to the primary trade dispute (eg hostility to flags of convenience). Under my proposals, therefore, a shipowner in Nawala-type circumstances would have an arguable case for seeking redress.

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*Yours
John*



Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213 6400

Switchboard 01-213 XXX0

Rt Hon Lord MacKay Of Clashfern PC QC
The Lord Advocate
Lord Advocate's Department
Fielden House
10 Great College Street
LONDON SW1

awolfe
16 February 1980

Dea Jones

WORKING PAPER ON SECONDARY INDUSTRIAL ACTION

Thank you for your letter of 15 February commenting on the draft paper.

The proposals are not based on action against particular employers, because that could extend immunity to such action taken far from the original dispute eg a long way down the chain of supply. They are instead based on action taken by employees of particular employers (including first suppliers in a substantial commercial relationship with the employer in dispute). This covers not only actual action by those employees but also threats of such action uttered by a union official. Your suggested redrafts of paragraphs 15 and 16 would not therefore reflect the policy. We have, however, in the light of your comments and others recast the description of the proposals in the working paper to make the intention quite clear.

Your other amendments have generally been incorporated in the final version, save for the reference to Section 13(1) which we think is too specific because the proposals would also require amendment of Section 13(3).

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Jones