

~~COVERING SECRET~~

coal pa

31 May 1984

MR TURNBULL

I attach a list of the main legal provisions, compiled by Peter Shipley, which may be of use in the coal discussions, backed up by the Attorney's full statement on this matter.



JOHN REDWOOD

TF.

To note

AT

~~SECRET~~

1. CIVIL LAW

- (a) secondary picketing: Section 16 of the Employment Act 1980 provides that picketing is lawful only if the person is picketing at or near his or her own place of work; and the purpose of the picketing is peaceful communication or persuasion.

The Code of Practice on Picketing, issued under the 1980 Act, offers guidance but does not have the force of law.

- (b) The 1982 Employment Act makes trade unions liable for organising unlawful picketing; civil action can therefore be taken against organisers of unlawful picketing as well as individual pickets.

2. CRIMINAL LAW

- (a) 1936 Public Order Act, especially Section 5 which prohibits threatening, insulting or abusive words or behaviour (maximum penalty 6 months imprisonment, £1,000 fine, or both);
- (b) 1875 Conspiracy and Protection of Property Act, especially Section 7 dealing with conspiring to carry out violence against persons or property;
- (c) riot (common law);
- (d) causing an affray (common law);
- (e) unlawful assembly (common law);
- (f) behaviour likely to cause a breach of the peace (common law);
- (g) obstruction of the highway or of a constable in the course of his duty;
- (h) 1972 Road Traffic Act, Section 159, under which the police may stop a vehicle if they suspect (f) above;
- (i) violence against the person including assault, wounding, etc (common law and statute including Offences Against the person act 1861);
- (j) criminal damage (including vandalism damage to property), Criminal Damage Act 1971;
- (k) possession of offensive weapons.

PETER SHIPLEY

DATAAH

~~SECRET~~

Written Answers to Questions

Friday 16 March 1984

ATTORNEY-GENERAL

Picketing (Criminal Law)

Mr. Steen asked the Attorney-General whether, in view of the recent activities of pickets, he will make a statement on the criminal law on picketing.

The Attorney-General: The statement that I made to the House on 19 February 1980 still applies in all its essentials, though there have, since that date, been certain changes in the relevant civil law which I shall explain later in this answer.

So far as the criminal law is concerned, the position is, as it always has been, that the criminal law of the land applies to pickets as it does to anybody else. Picketing is permissible, in terms of criminal law, only if it is peaceful picketing, that is to say, it is carried out for the purpose of peacefully obtaining or communicating information or peacefully persuading another person to work or not to work. The freedom to picket is not a licence to obstruct or intimidate.

This reflects the fundamental proposition of our law that each of us has the right to go about his daily work free from interference by anybody else. Each one of us is free, as an individual, to come and go as he pleases to his place of work. The law specifically protects our enjoyment of this right. If any one tries to deter us from exercising it by violence or intimidation or obstruction, he is breaking the law and may be punished. The freedom to picket does not confer or imply any right to stop vehicles: still less do pickets have the right to stop people going about their lawful business. Pickets have no right to link arms or otherwise prevent access to the place that they are picketing.

If pickets by sheer numbers seek to stop people going to work, they are not protected by the law since their purpose is to obstruct rather than persuade. The courts have recognised that the police may limit the number of pickets in any one place where they have reasonable cause to fear a breach of the peace. This may involve not only asking some of those present to leave but also preventing others from joining the pickets. In this connection, the code of practice which was issued under the Employment Act 1980, with the approval of both Houses of Parliament, indicates that in general the numbers of pickets should not exceed six at any entrance to a workplace. The 1980 Act itself provides that the provisions of the code of practice may be taken into account in proceedings before a court.

It is, of course, primarily the duty of the police to uphold and enforce the criminal law. It is for them to decide, consistently with that duty, what action any particular situation requires them to take. But there is no doubt that if a constable reasonably comes to the conclusion that persons are travelling for the purpose of taking part in a picket in circumstances where there is

likely to be a breach of the peace, he has the power at common law to call upon them not to continue their journey and to call upon their driver to take them no further. Any person who fails to comply with a police request in those circumstances will be committing the offence of obstructing a police officer in the course of his duty.

Turning now from the criminal to the civil law, it is and always has been a civil wrong to persuade someone to break his contract of employment or to secure the breaking of a commercial contract. However, the Trade Union and Labour Relations Act 1974, as amended, gives immunity from liability in respect of such a civil wrong to pickets who are acting in contemplation or furtherance of a trade dispute. But, since the Employment Act 1980, this immunity operates only for the benefit of a person who is attending a picket at or near his own place of work or for the benefit of a trade union official attending a picket at or near the place of work of a union member whom he is accompanying and whom he represents; and in either case only if the purpose of the picket is peacefully to obtain or communicate information or peacefully to persuade any person to work or not to work. Since the Employment Act 1982, trade unions themselves may be held liable for organising picketing which involves the commission of a civil wrong.

I hope that this re-statement of the legal position, which the Lord Advocate agrees reflects the main principles of the law of Scotland also, will serve to remove any doubts that might remain in any quarter about the strict limits within which pickets may seek to press their views on their fellow-citizens. As I said in my earlier statement to the House, it is the function of the law to protect the right of every person to make his own decision, free from violence or any other form of intimidation, on whether or not to work. The law permits no interference with that right and recognises no privilege or immunity vested in any person, merely because he is engaged in picketing, to act in a way which constitutes a criminal offence. That has always been the law and I am sure that those responsible for enforcing it will have the support and encouragement of the vast majority of the people of this country in ensuring that it is indeed enforced vigorously and without fear or favour.

Supergrass Evidence

Mr. McNamara asked the Attorney-General what guidance is given to the judges, and what criteria are used, when evidence is given in a Diplock court by a supergrass witness, concerning the verification of the testimony given.

The Attorney-General: The executive does not give guidance to judges. Their conduct of cases is governed by rules of law or statute. The law applicable to this matter is the same in Northern Ireland as in England and Wales. It is well understood and generally available in text books and reported decisions. I refer the hon. Member to the written answer that I gave on 24 October 1983 and to what I have said on the matter in this House on a number of subsequent occasions.