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Ref A0 6279

PRIME MINISTER

European Court of Human Rights: Compensation for
Closed Shop Victims
(C(81)59)

BACKGROUND

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In his minute of 1 December the Secretary of State for Employment proposed that he should include in his Industrial Relations Bill a provision for compensation for anyone dismissed on closed shop grounds between the coming into force of the Trade Union and Labour Relations Act 1974 and the coming into force of the Employment Act 1980, where the circumstances were the same as those of the three former railmen who won their case earlier this year before the European Court of Human Rights at Strasbourg.

2. In addition to the three former railmen compensation would be available to:

- 6 former employees of Hull City Corporation whose case is before the European Commission of Human Rights;
- 40 other former British Rail employees dismissed under the same closed shop agreement as the 3 former railmen;
- others (possibly as many as 400) dismissed in comparable circumstances in other occupations between 1974 and 1980.

3. The Government is already seeking, through the European Commission of Human Rights, an agreed basis of compensation for the three former railmen and the 6 former Hull Corporation employees. For the rest it is proposed that there should be a statutory compensation scheme based on criteria which now apply in the Employment Act 1980 and using the maximum limits for industrial tribunal awards which were in force at the time of the

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dismissals.

4. The Secretary of State for Employment acknowledged that there was a danger of setting a precedent for compensation in other cases where people might claim to / ^{have grievances} comparable with those found to constitute a breach of the Convention. He argued however that a distinction could be drawn on the basis that, in these closed shop cases, the grievance arose because of a specific piece of legislation in force for only six years which the Government had repealed before the case came to the Court.

Flag B

5. In subsequent minutes (listed in para 2 of C(81)59 and annexed to it) many Ministers have expressed concern about the Secretary of State for Employment's proposals. They have not been satisfied that dangerous precedents will not be created (for example over compensation for airport noise). There has also been anxiety that the compensation proposed under the statutory scheme, which will be less than that awarded to the three former railmen, will provide the basis for new complaints under the European Convention of Human Rights.

6. In his latest paper (C(81)59) the Secretary of State for Employment has sought to deal with these two difficulties. He proposes that the statutory compensation scheme should not be linked to the Court judgement in favour of the three railmen but should be viewed simply as retrospective action to supplement the Employment Act 1980, putting people who suffered in the period 1974-1980 in the same position as if they had the protection of the 1980 Act. Secondly he seeks to avoid complaints under the Convention about the amount of compensation by making it discretionary and creating no new statutory rights.

MAIN ISSUES

7. The main options for consideration are as follows:

a. To compensate only those closed shop victims who have successfully made out a case either to the European Court of Human Rights or the European Commission of Human Rights. (In effect this means the three former railmen and six former Hull Corporation employees, together with any other cases which may be held not to be out of time; we believe that proceedings in Strasbourg are no longer open in such cases, but the Freedom Association thinks otherwise.)

b. To compensate all closed shop victims dismissed in the same circumstances as the three railmen.

c. To draw the line in some intermediate position, eg by providing compensation for closed shop victims dismissed under the same closed shop agreement as the three railmen and six Hull Corporation employees.

8. The main argument in favour of option a is that the Government has demonstrated its concern about the closed shop by the provisions in the Employment Act 1980 and the proposals which will be included in the new Bill.

Beyond this, compensation ought to be available only for those who have taken the trouble to fight their case in Strasbourg. There are however, as the Secretary of State for Employment points out, in paragraph 8 of C(81)59, some powerful political arguments in favour of option b. Most Ministers are also likely to share his view that it would be difficult to defend a compromise approach on the lines of option c. The acceptability of option b. will depend on how far the Secretary of State for Employment is able to satisfy his colleagues on the two main points of difficulty - the need to avoid a dangerous precedent, and the need to avoid new actions in

Strasbourg about the inadequacy of the compensation arrangements.

9. The Secretary of State for Employment appears to have conceded that it would be desirable to avoid giving the impression that a judgement in the European Court of Human Rights justifies compensation for all those with similar grievances. Ministers may however question the new basis on which the statutory compensation scheme is to be justified on two grounds:

- i. whether it is plausible to pretend that there is no close link with the European Court judgement;
- ii. whether the new approach creates an awkward precedent of a different kind by suggesting that, where the Government alters the law, it should provide retrospective compensation for those adversely affected by the earlier legislation.

10. On the difficulty about possible new complaints at Strasbourg over inadequate compensation, it will be necessary to explore carefully whether it will be sufficient to make the payments discretionary. The Attorney General will wish to advise on whether there may be grounds for complaint in Strasbourg about the exercise of the discretion, particularly as the levels of compensation envisaged are less generous than the settlements which will be made with the three railmen and the six Hull Corporation employees.

11. In his minute of 8 December the Chancellor of the Exchequer has raised the question whether it would be better for the Government to provide the compensation for closed shop victims in response to pressure while the Bill is going through Parliament rather than to include such provisions when the Bill is introduced. This might make it easier for the Government to avoid taking responsibility for a new principle of ex gratia compensation. On the other hand the Secretary of State for Employment (para 8 of C(81)59) sees political advantages from including the scheme in the Bill from the outset.

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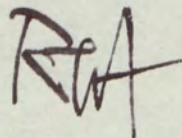
HANDLING

12. When the Secretary of State for Employment has introduced his paper you may wish to invite comments from the Lord Chancellor and the Attorney General on the general legal issues and then from the other Ministers who have contributed to the correspondence: ie the Chancellor of the Exchequer, the Foreign and Commonwealth Secretary and the Secretaries of State for the Environment and for Trade.

CONCLUSIONS

13. You will wish to reach conclusions on the following matters:

- i. whether there should be legislation to provide compensation for those categories of closed shop victims defined by the Secretary of State for Employment;
- ii. whether the justification for the compensation scheme should be as proposed in paragraphs 4 and 5 of C(81)59;
- iii. whether the compensation payments should be discretionary;
- iv. whether the details of the scheme should be as set out in the Secretary of State for Employment's minute of 1 December;
- v. whether the proposals should be included in the new Industrial Relations Bill when it is introduced, rather than added in response to Parliamentary pressure at a later stage.



ROBERT ARMSTRONG

9 December 1981

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