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PS

Legal Procedure

10 DOWNING STREET

From the Private Secretary

11 January 1982

Dear Barnaby,

European Court of Human Rights: British Rail Closed Shop Case

Your Secretary of State sent the Prime Minister a copy of his letter of 7 January following his meeting with Lord De L'Isle and Lord Renton about the question of compensation for the three railwaymen whose dismissal by British Rail has been held by the European Court to be a breach of the European Convention on Human Rights.

The Prime Minister has commented that she entirely agrees with your Secretary of State's approach. She believes that we should pay the legal costs in full. She has added that we should make a good payment for damages for this case "which was one of exceptional courage and principle".

I am sending copies of this letter to Michael Collon (Lord Chancellor's Office), Jim Nursaw (Attorney General's Office), John Bailey (Treasury Solicitor's Office); and to Terry Mathews (Chief Secretary's Office).

Yours sincerely,

Michael Scholar

Barnaby Shaw, Esq.,
Department of Employment



Prime Minister

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Rt Hon Lord Carrington PC KCMG MC
Secretary of State
Foreign and Commonwealth Office
Whitehall
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I entirely agree
with Norman Pettit.
Pay the legal costs
in full - and feed
damages for this case

D. Peter.

which was one of exceptional
length & principle.

EUROPEAN COURT OF HUMAN RIGHTS: BRITISH RAIL CLOSED SHOP CASE

Yesterday I met Lord De L'Isle and Lord Renton at their request to discuss the question of compensation for the 3 Railmen whose dismissal by British Rail has been held by the European Court to constitute a breach of the European Convention of Human Rights. The Government's offer of compensation was conveyed to the European Commission in the agent's letter of 16 November and I understand that a meeting has been arranged for 29 January to try to secure a friendly settlement of the Railmen's claim.

will request if required

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Lord De L'Isle and Lord Renton made it clear that they were acting as representatives of the Freedom Association and they put to me much the same points they and Lord Orr-Ewing put to the Lord Chancellor on 15 December (recorded in Mr Huebner's letter of 16 December a copy of which was sent to your private secretary). They emphasised their concern that the 3 Railmen's claim for material loss should be met in full and that the Government should offer something by way of moral damages. However, they were unaware of the details of the offer already made in respect of material loss (and seemed unsure of the details of the individual claims). Moreover, Lord Renton accepted that moral damages were not a normal feature of British law and said that he would not expect the Court to award more than £1-2,000 under this head. It became clear in fact that their main concern is the legal costs incurred by the Railmen which amount to some £96,000, £30,000 of which is owed by the Railmen to the Freedom Association who helped finance the bringing of the case. Unless, they say, the costs are met in full by the Government the Freedom Association will have to go into liquidation, the 3 Railmen will face bankruptcy; and every effort will then be made to lay the blame at the Government's door. They left me in no doubt whatsoever that they would secure



maximum publicity for the further hardship the Railmen and their families would suffer and cause us the greatest possible political embarrassment.

I replied that the Government regarded the offer they had made in respect of material loss as fair and even generous. I pointed out that the offer far exceeded anything the Railmen might have been awarded had they been able to bring a case for unfair dismissal. As far as moral damages were concerned, I emphasised our concern not to set a precedent which might have to be followed in other much less deserving cases. On the issue of legal costs I suggested that their Solicitors should get in touch with Treasury Solicitors and go over the bill together in good time before the meeting on 29 January, so that we could make a specific offer at that meeting. They agreed to this.

The Freedom Association are clearly reluctant to advise the 3 Railmen to take their claim for compensation to the Court and they are anxious to reach a friendly settlement. I believe that we must take what they say about the financial position of the Freedom Association and the 3 Railmen very seriously and that there would be grave dangers in appearing to be vindictive in the matter of costs when we have lost the case and a breach of the Convention has been found. We must acknowledge that a large part of the costs are attributable to the length of time the case took to reach a final judgement, even if most of the delays were the responsibility of the last administration. Furthermore, Lord Renton emphasised to me that some of the Counsel involved had accepted lower fees than they would normally command and that the engagement of a second firm of Solicitors in Paris had reduced travel and other expenses. Of course I am not in a position to assess the reasonableness of the fees and expenses charged but I hope that Treasury Solicitors will bear the considerations I have mentioned in mind when going over the details of the claim with the Railmen's Solicitors. I believe that if we can meet the claim for legal costs there is a good chance that the offer we have already made in respect of material loss will be accepted and that the claim for moral damages will not be pursued. If we do not try and meet them on costs I think we really do run the risk of being pilloried as a Government which is not even prepared to act decently and fairly when found to be in the wrong by the Court - a Government unconcerned at the hardship caused to the victims.

I am sending copies of this letter to the Prime Minister, the Lord Chancellor, the Attorney General and the Treasury Solicitor.

18 JAN 1982

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