



Legal Procedure

Prime Minister

②

Ms 20/1

Caxton House Tothill Street London SW1H 9NA

Telephone Direct Line 01-213.....6400 GTN 213

Switchboard 01-213 3000

Rt Hon Sir Michael Havers QC MP
 Attorney General's Chambers
 Royal Courts of Justice
 LONDON
 WC2A 2LL

19 January 1982

D. Michael,

European Court of Human Rights: British Rail Closed Shop Case

Thank you for your letter of 12 January.

I am reassured to learn that Treasury Solicitors are examining the applicants claim for legal costs urgently and that you have asked them to take a generous view of the items claimed. I accept, of course, that we need to be sure that the claim is well-founded and that it must, therefore, be subject to the normal scrutiny. I am also mindful of the risk of setting a precedent for other cases. However, I hope that, despite what you say in your letter about the length of time this scrutiny may take, Treasury Solicitors will be able to complete their discussions with the railmen's solicitors before the meeting under the Commission's auspices on 27 January. Even if we are not in a position to make a precise, firm offer at that meeting - and that is clearly the objective we should have in mind - we must, I think, be in a position to identify any items in the claim about which Treasury Solicitors are not satisfied and to indicate, if only in broad terms, how close we think we can come to meeting their full claim.

I think it is essential that we are able to go at least this far at the meeting on 27 January. Lord De L'Isle and Lord Renton made it clear to me that they regard legal costs as the key issue in securing a friendly settlement. They will no doubt continue to press the railmen's claims for compensation for material loss and moral damages but I do not think that they were exaggerating the consequences for the 3 railmen or the Freedom Association of having to meet the costs of fighting the case. So far, the Freedom Association have not sought any publicity for this issue but if we are not able to reassure them on 27 January we cannot expect them to remain quiet. I have little doubt where public sympathy would lie if the 3 railmen were thought to face bankruptcy.

CONFIDENTIAL



I hope therefore that Treasury Solicitors will be able to report the outcome of their discussions in time for us to formulate an offer which, however qualified, can be put forward on 27 January. Perhaps I should add that I am considering how much of the additional claim submitted by Mr Webster we should offer to meet and will be writing to you about this shortly.

... I attach a copy of the letter Lord De L'Isle sent me following our meeting on 5 January and of my reply.

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

[Handwritten signature]
[Handwritten signature]



9 JAN 1982
LIBRARY
UNIVERSITY OF
TORONTO



Prime Minister (2)

[Handwritten signature]

Ms 14/1

FCS/82/8

SECRETARY OF STATE FOR EMPLOYMENT

European Court of Human Rights: British Rail closed shop case

Thank you for your letter of 7 January in which you described the concerns of the Freedom Association as put to you by Lord De L'Isle and Lord Renton during their recent call upon you. I have also seen the Private Secretary letter of 11 January recording the Prime Minister's views.

I understand that, after a meeting held by the Attorney-General which the Treasury Solicitor, my officials and yours attended, the Attorney-General has advised that, as soon as the Treasury Solicitor's costs experts have been able to study the detailed breakdown of costs (which the applicants made available only on 12 January), the Treasury Solicitor should get in touch with the representatives of the three railwaymen with a view to reaching a settlement of the costs question. This seems to me to be a sensible way of proceeding.

We cannot, of course, be certain that the applicants will be willing to reach a settlement on costs on terms which the Governor can properly accept but we, for our part, will be as forthcoming as possible. While I recognise the political sensitivities of this case and the need to give the railwaymen a fair deal, we must nevertheless be careful to ensure that any settlement on costs is consistent with the jurisprudence of the European Court of Human Rights, namely that the costs were actually incurred and were necessary and reasonable, so that we avoid creating a difficult and expensive precedent for our other, numerous Strasbourg cases.

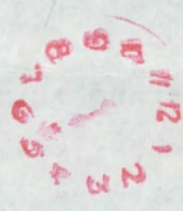
I am copying this minute to the Prime Minister, the Lord Chancellor, the Attorney-General and the Treasury Solicitor.

RM/Lyne

pp(CARRINGTON)

Foreign and Commonwealth Office, SW1

[Approved by the Foreign & Commonwealth Secretary before departure en route]



JAN 1982

HOUSE OF LORDS,
SW1A 0PW

*With the
Lord Chancellor's Compliments*



Prime Minister (2)

Ms 14/1
HOUSE OF LORDS,
SW1A 0PW

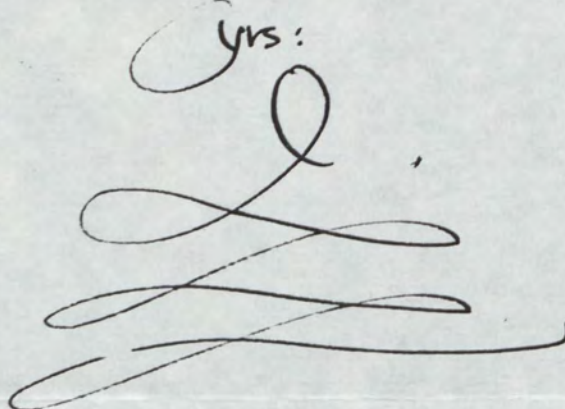
13 January 1982

Dear Norman,

European Court of Human Rights:
British Rail Closed Shop Case

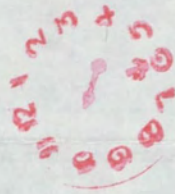
I have read your letter to Peter Carrington about the legal costs of the dismissed railwaymen. In my opinion they should be paid by the Government and taxed on a common fund basis if not agreed.

I am sending copies of this letter to recipients of yours.

Yrs:


The Right Honourable
Norman Tebbit, M.P.,
Secretary of State for Employment

174 JAN 1982



CONFIDENTIAL

Prime Minister

2

Ms 14/1



12th January 1982

The Rt.Hon.Norman Tebbit, M.P.
Secretary of State for Employment,
Caxton House,
Tothill Street, SW1H 9NF

Dear Norman.

EUROPEAN COURT OF HUMAN RIGHTS:
BRITISH RAIL CLOSED SHOP CASE.

Thank you for sending me a copy of your letter of 7 January to Peter Carrington. I have also seen the letter of 11 January from the Prime Minister's Private Secretary to yours, reporting the Prime Minister's comments.

This is a difficult case. I fully recognise its political sensitivity and I share your desire to do the right thing by the three Applicants and to be seen to be doing so. At the same time, we cannot justify paying out a large sum of money from public funds without being satisfied that the claim for it is well-founded and we have to be extremely careful that we do not establish precedents for meeting demands by persons who have brought successful proceedings in Strasbourg which we should find highly inconvenient (and perhaps even repugnant) to have to follow in other cases.

I do not think that these two policy objectives are necessarily incompatible. If the three Applicants in this case and their representatives are genuinely anxious to reach a reasonable settlement, I think that we can achieve one without unnecessary acrimony or embarrassment. I had a conference this morning with the Treasury Solicitor and with officials from your Department and the Foreign and Commonwealth Office. We had at that point just received a document from the Applicants' London solicitors which, for the first time, gives some details of the basis of the claim for costs on which we can work. It is unfortunate that this essential information was not provided earlier. I have asked the



Treasury Solicitor to put his costs experts into action at once to examine this document and at the same time to make contact with the Applicants' solicitors and set up, urgently, discussions at the technical level with them. Their task will be to establish the largest possible area of agreement and, beyond that, to identify the items in respect of which we shall need further justification of the propriety of our meeting the expense claimed or the full amount claimed for it. I have advised the Treasury Solicitor to take as uncombative, and indeed generous, view of the various items claimed as is possible consistent with his duty in these matters.

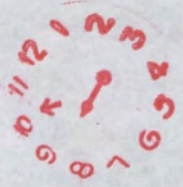
As I have said, we cannot properly pay the Applicants everything that they claim by way of legal expenses without first satisfying ourselves that the claim is a fair one, that each item of expense in question was reasonably incurred and the sum claimed for it is reasonable in amount, and we must also be on our guard not to concede obligations which we should wish to deny in other cases. But as I have also said, I think that the claim can probably be settled consistently with this, on what would generally be accepted as fair and even generous terms if the Applicants themselves are willing. Assuming that there is the right approach on both sides, it is now up to the technical experts to take the matter forward. It seems unlikely that they will have got sufficiently far with their task to make it worthwhile discussing this question of costs when we and the Applicants meet the representatives of the Commission in the week after next - I gather that the meeting is now likely to be on the 27th rather than the 29th - but that is for the Commission and the Applicants to decide; we for our part will not refuse to discuss anything that they want to discuss and we shall be alert to give no ground for criticism for being obstructive or niggardly or in any way unfair.

I am copying this letter to the other recipients of yours.

Yours G.C.

Michael.

74 JAN 1982





(F)

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

(2)

Caxton House Tothill Street London SW1H 9NA F

Telephone Direct Line 01-213 6400
Switchboard 01-213 3000

GTN 213

ms 871

Rt Hon Lord Carrington PC KCMG MC
Secretary of State
Foreign and Commonwealth Office
Whitehall
LONDON SW1

I entirely agree
with Norman Pettit.
Pay the legal costs
in full - and feed
7.1.82
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

will request if required

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.

J. G. [Signature]
Norman [Signature]

18 JAN 1982

10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

in the Dupond

me

Legal ² MP

Prime Minister Procedure

This is the Employment
process notice and, at Page
A, background note on
the Strasbourg decision.
(he was not consulted) ~~and~~

August 13, 1981

~~12~~ ¹² ~~12~~

13/8

GOVERNMENT REACTION TO THE JUDGMENT AT THE EUROPEAN COURT OF HUMAN RIGHTS

A Government spokesman said today that the Government have always made it clear that they sympathise fully with the three railwaymen. We condemned their dismissal at the time and condemned the legislation of the last Government under which they were dismissed without compensation of any kind. That legislation has now been ~~replaced.~~ *repealed.*

If the case occurred today the railwaymen would have the protection of the law. The Employment Act ¹⁹⁸⁰ now provides a right for employees in a situation similar to the three railwaymen (ie existing non union employees who do not wish to join a union when a closed shop is introduced) to remain non union members and to take their case to an industrial tribunal if this right is violated. The Act also provides similar protection for those who are opposed to membership of a trade union on grounds of "conscience or other deeply held personal convictions." These two new protections would appear to meet major points in the Court's judgment.

The Government did not defend the railwaymen's dismissal before the European Court. The case was concerned with the interpretation of the European Convention on Human Rights and what it says and does not say about the right to associate. Now the Court have found that there was a breach of the Convention when the railwaymen were sacked in 1976. We shall have to study the judgment very carefully to see whether the Government should introduce any further changes beyond those already made in the 1980 Employment Act.

Background Note

The case so far

1. The case arose in 1976 under the previous administration whose legislation at that time, the Trade Union and Labour Relations Act 1974, as amended in 1976, left British Rail free to negotiate its rigid agreement allowing only those with objections on grounds of religious belief to membership of any union to be exempt from the requirement of join a union.
2. Three British Rail employees - Young, James and Webster - who were dismissed for refusing to join one of the unions specified in the closed shop agreement applied to the European Commission of Human Rights. They alleged that the Trade Union and Labour Relations Acts 1974 and 1976 and their dismissal breached Articles 9 (freedom of thought and conscience), 10 (freedom of expression), 11 (freedom of association) and 13 (right of domestic remedy for violation of the European Convention on Human Rights).
3. The present Government inherited the case when it was at an advanced stage before the European Commission of Human Rights. The Government's Law Officers nevertheless had a duty to explain its position on the case to the Commission and to state what the UK felt was the proper interpretation of the Convention.
4. Accordingly, the Solicitor-General made clear before the Court the UK's belief that the freedom to associate conferred by the Convention does not accord a negative right not to be compelled to join a union; that the preparatory work of the Convention shows that this is the correct interpretation; and that this interpretation was deliberately intended. Also, the Government is not to be held directly responsible under the Convention for the acts of public bodies like British Rail.
5. The Government did not defend the railwaymen's dismissal before the European Court. The Solicitor-General made it very clear that the Government regarded the three men's dismissal as disgraceful

and the legislation which permitted it as indefensible. But this is a separate matter from any violation of the European Convention.

6. The Commission found in December 1979 that the Article 11 right to freedom of association with others, including the right to join and form trade unions, had been violated. It made no decision about Articles 9 and 10 and decided there had been no additional breach of Article 13. The Commission also said it thought the Convention "neither prohibits nor allows 'closed shops' in general". It then referred the case to the European Court, which heard the case on 3rd and 4th March this year.

The Government's position

7. The Government - when in opposition - had always opposed the 1976 legislation and expressed its total sympathy with the 3 ex-British Railmen who were dismissed without a domestic remedy under it.

8. The case was a powerful impetus behind the Government's promises in its election manifesto to protect individual freedom in closed shops. The Employment Act 1980 now provides a right for employees in a situation similar to the 3 railmen (i.e. existing non-union employees when a closed shop is introduced) not be unfairly dismissed for not being union members, and a remedy through appeal to an industrial tribunal for the violation of that right. Had legislation similar to this been in force in 1976, the case before the European Court would not have arisen.

9. The Employment Act has also increased the protection for the other categories of employee who do not want to join a union in a closed shop:

- those who are opposed to membership of any or a particular union on grounds of conscience or other deeply held personal conviction;
- those employed in "new" closed shops (i.e. those brought into operation after 15 August 1980 - the date of the Employment Act's provisions coming into effect) where the closed shop has not been approved by 10% of the employees covered voting in favour in a secret ballot.

Handwritten initials/signature

15564 DEPENP G
DELSG 890157F

FROM UK DELEGATION COUNCIL OF EUROPE STRASBOURG
URGENT FOR DAVID NORMANTON DEPARTMENT OF EMPLOYMENT

PLEASE ALSO PASS IMMEDIATE TO DAVID EDWARDS LEGAL ADVISERS
FOREIGN AND COMMONWEALTH OFFICE

JUDGEMENT OF EUROPEAN COURT OF HUMAN RIGHTS
CASE OF YOUNG JAMES AND WEBSTER

COURT HELD BY 18 VOTES TO 3 THAT THERE HAD BEEN A BREACH
OF ARTICLE 11 IN THIS CASE. DISSIDENTING JUDGES WERE SORENSEN
JOINED BY JUDGES THOR VILHJALMSSON AND LAGERGREN

FOLLOWING ARE EXTRACTS FROM THE JUDGMENT:

51 A SUBSTANTIAL PART OF THE PLEADINGS BEFORE THE COURT WAS
DEVOTED TO THE QUESTION WHETHER ARTICLE 11 @-GUARANTEES NOT ONLY
FREEDOM OF ASSOCIATION BY INCLUDING THE RIGHT TO FORM
AND TO JOIN TRADE UNIONS, IN THE POSITIVE SENSE, BUT ALSO, BY
IMPLICATION, A 'NEGATIVE RIGHT' NOT TO BE COMPELLED TO JOIN
AN ASSOCIATION OR A UNION.....

52. THE COURT DOES NOT CONSIDER IT NECESSARY TO ANSWER THIS
QUESTION ON THIS OCCASION.

THE COURT RECALLS, HOWEVER, THAT THE RIGHT TO FORM AND TO
JOIN TRADE UNIONS IS A SPECIAL ASPECT OF FREEDOM OF ASSOCIATION
(SEE THE NATIONAL UNION OF BELGIAN POLICE JUDGMENT OF 27 OCTOBER
1975, SERIES A NO. 19, P. 17, PARA 28). IT ADDS THAT THE NOTION
OF A FREEDOM IMPLIES SOME MEASURE OF FREEDOM OF CHOICE AS TO ITS
EXERCISE.

ASSUMING FOR THE SAKE OF ARGUMENT THAT, FOR THE REASONS
GIVEN IN THE ABOVE SITED PASSAGE FROM THE TRAVAUX PREPARATOIRES,
A GENERAL RULE SUCH AS THAT IN ARTICLE 20 PARA 2 OF THE UNIVERSAL
DECLARATION OF HUMAN RIGHTS WAS DELIBERATELY OMITTED FROM, AND
SO CANNOT BE REGARDED AS ITSELF ENSHRINED IN, THE CONVENTION,
IT DOES NOT FOLLOW THAT THE NEGATIVE ASPECT OF A PERSONS FREEDOM
OF ASSOCIATION FALLS COMPLETELY OUTSIDE THE AMBIT OF ARTICLE 11
AND THAT EACH AND EVERY COMPUSSION TO JOIN A PARTICULAR TRADE
UNION IS COMPATIBLE WITH THE INTENTION OF THAT PROVISION.
TO CONSTRUE ARTICLE 11 -1 AS PERMITTING EVERY KIND OF COMPUSSION
IN THE FIELD OF TRADE UNION MEMBERSHIP WOULD STRIKE AT THE VERY
SUBSTANCE OF THE FREEDOM IT IS DESIGNED TO GUARANTEE.....

53. THE COURT EMPHASIZES ONCE AGAIN THAT, IN PROCEEDINGS
ORIGINATING IN AN INDIVIDUAL APPLICATION, IT HAS, WITHOUT LOSING
SIGHT OF THE GENERAL CONTEXT, TO CONFINE ITS ATTENTION AS FAR AS
POSSIBLE TO THE ISSUES RAISED BY THE CONCRETE CASE BEFORE IT.....
ACCORDINGLY IN THE PRESENT CASE IT IS NOT CALLED UPON TO REVIEW
THE CLOSED SHOPS SYSTEM AS SUCH IN RELATION TO THE CONVENTION
OR TO EXPRESS AN OPINION ON EVERY CONSEQUENCE OR FORM OF COMPUSSION
WHICH IT MAY ENGENDER: IT WILL LIMIT ITS EXAMINATION TO THE
EFFECTS OF THAT SYSTEM ON THE APPLICANTS.....

53. THE COURT EMPHASIZES ONCE AGAIN THAT, IN PROCEEDINGS ORIGINATING IN AN INDIVIDUAL APPLICATION, IT HAS, WITHOUT LOSING SITE OF THE GENERAL CONTEXT, TO CONFINE ITS ATTENTION AS FAR AS POSSIBLE TO THE ISSUES RAISED BY THE CONCRETE CASE BEFORE IT..... ACCORDINGLY IN THE PRESENT CASE IT IS NOT CALLED UPON TO REVIEW THE CLOSED SHOPS SYSTEM AS SUCH IN RELATION TO THE CONVENTION OR TO EXPRESS AN OPINION ON EVERY CONSEQUENCE OR FORM OF COMPULSION WHICH IT MAY ENGENDER : IT WILL LIMIT ITS EXAMINATION TO THE EFFECTS OF THAT SYSTEM ON THE APPLICANTS.....

55. THE SITUATION FACING THE APPLICANTS CLEARLY RUNS COUNTER TO THE CONCEPT OF FREEDOM OF ASSOCIATION IN ITS NEGATIVE SENSE.

ASSUMING THAT ARTICLE 11 DOES NOT GUARANTEE THE NEGATIVE ASPECT OF THAT FREEDOM ON THE SAME FOOTING AS THE POSITIVE ASPECT , COMPULSION TO JOIN A PARTICULAR TRADE UNION MAY NOT ALWAYS BE CONTRARY TO THE CONVENTION.

HOWEVER A THREAT OF DISMISSAL INVOLVING LOSS OF LIVELIHOOD IS A MOST SERIOUS FORM OF COMPULSION AND, IN THE PRESENT INSTANCE, IT WAS DIRECTED AGAINST PERSONS ENGAGED BY BRITISH RAIL BEFORE THE INTRODUCTION OF ANY OBLIGATION TO JOIN A PARTICULAR TRADE UNION.

IN THE COURTS OPINION , SUCH A FORM OF COMPULSION, IN THE CIRCUMSTANCES OF THE CASE, STRIKES AT THE VERY SUBSTANCE OF THE FREEDOM GUARANTEED BY ARTICLE 11. FOR THIS REASON ALONE, THERE HAS BEEN AN INTERFERENCE WITH THAT FREEDOM AS REGARDS EACH OF THE THREE APPLICANTS.

56. ANOTHER FACET OF THIS CASE CONCERNED THE RESTRICTION OF THE APPLICANTS' CHOICE AS REGARDS THE TRADE UNION WHICH THEY COULD JOIN OF THEIR OWN VOLITION. AN INDIVIDUAL DOES NOT ENJOY THE RIGHT TO FREEDOM OF ASSOCIATION IF IN REALITY THE FREEDOM OF ACTION OR CHOICE WHICH REMAINS AVAILABLE: 58:-) =-)73.....

THE GOVERNMENT SUBMITTED THAT MM.....IT WOULD HAVE BEEN OPEN TO THE APPLICANTS TO FORM OR TO JOIN A TRADE UNION IN ADDITION TO ONE OF THE SPECIFIED UNIONS. THE APPLICANTS , ON THE OTHER HAND , CLAIMED THAT THIS WAS NOT THE CASE IN PRACTICE, SINCE SUCH A STEP WOULD HAVE BEEN PRECLUDED BY BRITISH RAIL'S AGREEMENT WITH THE RAILWAY UNIONS AND BY THE BRIDLINGTON PRINCIPLES..... BE THAT AS IT MAY SUCH FREEDOM OF ACTION OR CHOICE AS MIGHT HAVE BEEN LEFT TO THE APPLICANTS IN THIS RESPECT WOULD NOT IN ANY WAY HAVE ALTERED THE COMPULSION TO WHICH THEY WERE SUBJECTED SINCE THEY WOULD IN ANY EVENT HAVE BEEN DISMISSED IF THEY HAD NOT BECOME MEMBERS OF ONE OF THE SPECIFIED UNIONS.

57. MOREOVER NOTWITHSTANDING ITS AUTONOMOUS ROLE AND PARTICULAR SPERE OF APPLICATION, ARTICLE 11 .MUST, IN THE PRESENT CASE ALSO BE CONSIDERED IN THE LIGHT OF ARTICLES 9 AND 10. MM.....IN THIS FURTHER RESPECT THE TREATMENT COMPLAINED OF - IN ANY EVENT AS REGARDS MR YOUNG AND MR WEBSTER - CONSTITUTED AN INTERFERENCE WITH THEIR ARTICLE 11 RIGHT.
(END OF EXTRACT FROM JUDGMENT)

ALTHOUGH THE GOVERNMENT DID NOT SEE K TO PLEAD JUSTIFICATION UNDER PARAGRAPH 2 OF ARTICLES 9 10 OR 11 THE COURT DECIDED TO EXAMINE THIS ISSUE ON ITS OWN MOTION AND FOUND THAT IN ALL THE CIRCUMSTANCES OF THE CASE THE DETRIMENT SUFFERED BY THE APPLICANTS WENT FURTHER THAN WAS REQUIRED TO ACHIEVE A PROPER BALANCE BETWEEN THE CONFLICTING INTERESTS OF THOSE INVOLVED AND CANNOT BE REGARDED AS PROPORTIONATE TO THE AIMS BEING PURSUED. THE COURT FOUND THAT THE RESTRICTIONS COMPLAINED OF WERE NOT QUOTES NECESSARY IN A DEMOCRATIC SOCIETY END QUOTES AS REQUIRED BY PARAGRAPH 2 OF ARTICLE 11. THE COURT ACCORDINGLY HELD THAT THERE HAD BEEN A VIOLATION OF THIS ARTICLE.

AN INTERFERENCE WITH THEIR ARTICLE 11 RIGHT.
(END OF EXTRACT FROM JUDGMENT)

ALTHOUGH THE GOVERNMENT DID NOT SEEK TO PLEAD JUSTIFICATION UNDER PARAGRAPH 2 OF ARTICLES 9 10 OR 11 THE COURT DECIDED TO EXAMINE THIS ISSUE ON ITS OWN MOTION AND FOUND THAT IN ALL THE CIRCUMSTANCES OF THE CASE THE DETRIMENT SUFFERED BY THE APPLICANTS WENT FURTHER THAN WAS REQUIRED TO ACHIEVE A PROPER BALANCE BETWEEN THE CONFLICTING INTERESTS OF THOSE INVOLVED AND CANNOT BE REGARDED AS PROPORTIONATE TO THE AIMS BEING PURSUED. THE COURT FOUND THAT THE RESTRICTIONS COMPLAINED OF WERE NOT QUOTES NECESSARY IN A DEMOCRATIC SOCIETY END QUOTES AS REQUIRED BY PARAGRAPH 2 OF ARTICLE 11. THE COURT ACCORDINGLY HELD THAT THERE HAD BEEN A VIOLATION OF THIS ARTICLE.

THE COURT DID NOT CONSIDER IT NECESSARY TO DETERMINE WHETHER ARTICLES 9 AND 10 HAD BEEN VIOLATED IN THEMSELVES OR WHETHER THERE HAD IN ADDITION BEEN A VIOLATION OF ARTICLE 13.

THE QUESTION OF JUST SATISFACTION UNDER ARTICLE 50 OF THE CONVENTION WAS REFERRED BACK TO THE CHAMBER. JUDGE MWIARDA ANNOUNCED THAT THE CHAMBER HAD ASKED THE COMMISSION TO SEEK A FRIENDLY SETTLEMENT WITHIN TWO MONTHS.

PSE READ IN PARAGRAPH 56 AFTER AVAILABLE
AVAILABLE TO HIM IS EITHER NON EXISTENT OR SO REDUCED AS TO
BE OR NO PRACTICAL VALUE.....

THE GOVERNMENT

UKDELSG 890157F

ENDS
SENT PS
SENT AT 1135 LT

915564 DEPEMP G
UKDELSG 890157F

Reviewed through 1 or (how)?

~~Can we have a reply?~~

Understand reply temp
drafted - ms ~~not~~

5th January, 1981.

De Pen Hurst

The case of the three former British Railwaymen before the European Commission of Human Rights at Strasbourg has been proceeding since February, 1977. This extended process of justice has been due to a very major extent to postponements of hearings made at Government request. There have been no less than nine such postponements.

In view of the inequality of the capacity between the parties to the case the Applicants who have been denied the unimpeded resolution of their complaints their situation deserves, have suffered not least from the greatly increased burden of expense involved in delay.

After pressure in Parliament Her Majesty's Government submitted its Final Memorial to the European Court of Human Rights on the 5th December last.

The Court has arranged to sit for its oral hearing of the case on 24th February next. This date has been fixed in accordance with the settled procedures and practices of that Court.

Today my colleague Norris McWhirter and I have been informed that Her Majesty's Government is now applying for yet another postponement, this time of the Court's hearing.

The Freedom Association which has been acting throughout in support of the Applicants has arranged for two senior counsel to appear for the Applicants at Strasbourg on the date named. We have been hard at work, ever since we received the Government's Final Memorial on 8th December, in order precisely to meet the deadline of the 15th January settled by the European Commission for the submission of the Applicants' Memorial in reply to the Government's.

contd/.....

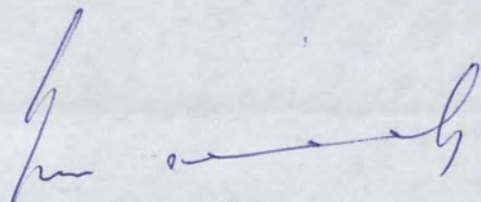
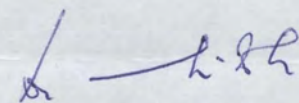
The Rt. Hon. Margaret Thatcher M.P.

5th January, 1981.

- 2 -

This latest request for postponement made unilaterally by Her Majesty's Government cannot but be seen as an example of justice denied by repeated delays to three citizens of the United Kingdom who are exercising their undoubted rights, guaranteed under a treaty solemnly undertaken by the United Kingdom to establish that they are the victims of serious breaches of the Convention of Human Rights first admitted by the Commission on 3rd March, 1978.

Members of the Government have, on several occasions, publicly expressed "sympathy" for the Applicants. May I respectfully suggest that those directly responsible should be asked to give practical expression of this sympathy by withdrawing this latest application for a delayed hearing so that the case may proceed under the arrangements already made by the Court.

The Right Hon. Margaret Thatcher, M.P.

cc: Mr Ryrie
Mr F. Jones
Mr Dixon
Mrs Heaton
Miss Sinclair

Nolo ←



CF
Any PPS?
Legal Procedures

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

5th March, 1980

Dear Noms

— will request
if requested

Thank you for your letter of 25th January enclosing an article from the Sunday Times on the James, Webster and Young versus the United Kingdom case currently before the European Commission on Human Rights.

The Government, of course, has considerable sympathy for the plaintiffs in this case. We inherited these proceedings when they were already at an advanced stage. The Solicitor General personally attended the Commission's hearing so as to make our position - which differed radically from that of our predecessors - clear. Long before these particular cases arose, we fought vigorously in Opposition to prevent the present legislative provisions being introduced.

As you know, the Government is now proposing to furnish people in similar circumstances with a legal remedy. These proposals will provide protection for a wider category of conscientious objectors, existing employees, and employees where a post-Act union membership agreement has not been approved by the requisite ballot.

You clearly feel that the Government is not going far enough insofar as it is preserving the right to have closed shops in law. The Government take the view that any attempt to outlaw the closed shop as such by law would be ineffective; a number of European countries are said to have had different experiences in this respect. And, however much we may regret it, a number of employers are by no means opposed to closed shops where these operate in their industries.

Speaking personally, I am disposed to take your "in principle" view of this problem. But I have to remind myself (and you!) that even "my own" Industrial Relations

/Act eventually

N. McWhirter, Esq.,



Act eventually stopped short of total prohibition of the closed shop: so the case for some kind of compromise, for the sake of acceptance and enforceability, is by no means entirely disreputable!

A handwritten signature in black ink, appearing to read "Geoffrey Howe".

(GEOFFREY HOWE)



Legal Practice

10 DOWNING STREET

THE PRIME MINISTER

25 July 1979

Dear Bill

Thank you for your letter of 16 July, commenting on the situation now reached in the European Commission for Human Rights hearing of the railwaymen's case.

I am advised that the proceedings before the Commission, including any provisional views which may have been indicated by the Commission, are confidential between the complainants, the Commission, and Her Majesty's Government. In these circumstances, it would be a breach of the requirements of the Convention for me to enter into correspondence with anyone else about them at this stage. I am sorry that I cannot take the matter any further with you for the present.

Yours ever

MT

The Right Honourable The Viscount de L'Isle, V.C., K.G., G.C.M.G.,
G.C.V.O.

jfh



10 DOWNING STREET

PRIME MINISTER

You asked me to seek the Attorney-General's advice on Viscount de L'Isle's letter at Flag A.

The letter at Flag B is the response. Would you like to discuss this with Sir Ian Percival, or would you prefer simply to respond briefly to Viscount de L'Isle as in the attached draft?

MAP

23 July 1979

CONFIDENTIAL

01-405 7641 Ext. 3229

Communications on this subject should
be addressed to
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

19 July, 1979

Mr. Partim.

*Jul
23/7*

Dear Dalisai,

EUROPEAN COMMISSION ON HUMAN RIGHTS

I am replying to your letter to Beckett of 18 July, enclosing one from Lord De L'Isle dated 16 July.

It was a breach of the requirements of confidence imposed by the Human Rights Convention for the complainants to have disclosed the "provisional findings" of the Commission to McWhirter and De L'Isle; McWhirter sought admission to the recent oral hearings at Strasbourg and was excluded by the Commission on those grounds. De L'Isle's account of the "provisional findings" and the subsequent proceedings are also inaccurate. In particular, the Commission's provisional view was limited to the particular circumstances i.e. where existing employees are requested to join a union when a new closed shop is negotiated.

Since the Government has announced its intention to legislate for that situation the allegation in the penultimate paragraph of De L'Isle's letter is not justified.

In the circumstances the Solicitor-General (who has been conducting the Strasbourg case) considers that the Prime Minister could

/reply

CONFIDENTIAL

CONFIDENTIAL

01-405 7641 Ext.

*Communications on this subject should
be addressed to*
THE LEGAL SECRETARY
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,
LAW OFFICERS' DEPARTMENT,
ROYAL COURTS OF JUSTICE,
LONDON, W.C.2.

-2-

reply that she is advised that the proceedings before the Commission, including any provisional views which may have been indicated by the Commission, are confidential between the complainants, the Commission and HMG, and that it would be a breach of the requirements of the Convention for her to enter into correspondence with other persons about them

If the Prime Minister would like a fuller explanation the Solicitor-General would be glad of an opportunity to see her.

Yours Sincerely,
Michael de Winton

M G de Winton

Michael Pattison Esq
10 Downing Street
London, S.W.1.

CONFIDENTIAL

7
6
5
4
3
2
1
12
11
10
9
8
7
6
5
4
3
2
1

23 JUL 1979

... she is advised that the proceedings before the
Commission, including any provisional views which may have been
indicated by the Commission, are confidential between the
Commissioners, the Ambassador and the Secretary, and that it would be
inappropriate for the Commission to enter into any correspondence
with other persons.

If the Prime Minister would like a fuller explanation she
would be glad of an opportunity to see her.

Special Liaison
10 Downing Street
London, S.W. 1

Legal Procedure

CONFIDENTIAL

72



B/F 25.7.79

10 DOWNING STREET

From the Private Secretary

18 July 1979

Dear Bill

European Commission on Human Rights

You will have seen a copy of the Secretary of State for Employment's minute to the Prime Minister of 28 June (copied to Lord Carrington and the Solicitor General) advising her on a reply to a letter from Viscount De L'Isle about the British Rail cases which were to be heard on 9 July.

The Prime Minister duly replied on 4 July.

She has now received a further letter from Viscount De L'Isle, a copy of which I enclose. She would much appreciate the confidential advice of the Attorney General about the handling of this letter, which appears to be an attempt by the Freedom Association to elicit a comment from her on a matter which is technically sub judice. I would be grateful for advice by 25 July, which should not be copied elsewhere.

*Yours ever
Mike Patterson*

W.C. Beckett, Esq., C.B.,
Law Officers' Department.

CONFIDENTIAL

789

PRIME MINISTER

Viscount De L'Isle wrote to you on 19 June (Flag A) about the case of three railwaymen which was due to come before the European Commission on Human Rights.

Mr. Prior's minute at Flag B set out the background, and you then replied as in Flag C.

The attached lengthy letter from Viscount De L'Isle seems to me to be an attempt by the Freedom Association to elicit comment from you on a matter which is technically sub judice.

Should we ask advice from Mr. Prior and the Attorney General as to whether you should engage in any further correspondence whilst this is sub judice?

MA
Confidential letter to A.G. only
nm

17 July 1979

17 July 1979

I am writing to acknowledge your letter of 16 July to the Prime Minister. I will of course bring this to her attention immediately.

MAP

The Right Honourable The Viscount de L'Isle,
V.C., K.G., G.C.M.G., G.C.V.O. B

16th July, 1979.

Dear Margaret

When you wrote to me on 4th July you expressed the hope that The European Commission for Human Rights and Fundamental Freedoms would reach a decision in the railwaymen's case without further delay.

It is an immediate relief that they have done so. But at the same time the outcome of the case is a cause for apprehension in the longer term. This is why I am now writing to you.

Since the Commission's findings at the final oral hearing on 9th July are officially termed "provisional" the case is still Sub Judice, and so the parties remain bound to secrecy. However, as the two senior officers of the Freedom Association, which briefed Counsel for the railwaymen (and are thus interested parties including our interest in the costs incurred on behalf of the petitioners) Norris McWhirter and I have been made personally aware of the nature of the Commission's decision, and as well, of their ongoing procedures. Thus, we have learned that a Sub-Commission consisting of seven members of the Commission will be set up, to which will be added one representative for the British Governments and one for the three petitioners.

The role of the Sub-Commission is, so we are told, as follows - 'In the event of the Commission accepting a petition, it places itself at the disposal of the parties with a view to seeking a "friendly settlement" of the matter, on the basis of respect of the Human Rights as defined in the Convention'. The proceedings of the Sub-Commission may go on for some three months and behind closed doors.

As you will know, the Commission found that British Railways, in dismissing the three railwaymen, Messrs. James, Webster and Young, infringed no less than three of the fundamental rights enshrined in the Convention. It held, against the Solicitor General's submission, that the British Government is, in fact, primarily responsible before the Commission, for acts committed by a nationalised industry in contravention of human rights and fundamental freedoms.

16th July, 1979.

Perhaps we should not be surprised that an Administration, so subject to Trade Union influences as was Mr. Callaghan's, should have, despite all the legal advice available to it, secured the passage of the Trade Union and Labour Relations Acts in their present form. It was under these acts British Railways proceeded in dismissing 54 railwaymen (including the three petitioners) for refusing to join a union under the British Railways/Trade Union Closed Shop agreement. That Administration passed these acts into Law without, it seems any regard to its obligations under the European Convention. They would have done better to heed Quintin Hailsham's prescient warning in the House of Lords that it would find itself "up before the Court of Human Rights".

The recent findings of the Commission must be of profound international, as well as national, significance. For this is the first case of its kind brought under Articles 9, 10 and 11 (and the petitioners succeeded under each Article), and the relevant procedures affecting industrial rights and freedoms are thus being applied for the first time. In all the circumstances, including the unlawfulness of the closed shop throughout the rest of Western Europe, it seems, in the highest degree, unlikely that the Council of Ministers, when this test case comes before it, will amend the Commission's findings.

In the meantime, the petitioners could hardly be advised to concede the basic issues of principle affecting the lawfulness of the closed shop on which the Commission has pronounced. These three railwaymen have, each of them, had to bear a very heavy burden in the course of their three year journey to Strasbourg. No one who recognises their personal sacrifices in the pursuit of justice will expect them to do other than persist, least of all The Freedom Association. In the nature of things the petitioners will earnestly hope that their successful petitions which were initiated during the period of a Labour Government, will prove acceptable, both in their intent and in their results to the present Conservative Administration.

Norris and I find ourselves in a position of special responsibility, since the petitioners have, from the outset, given our Association their confidence. The rules of procedure in enjoining secrecy during the currency of the proceedings, increase that personal responsibility; for we can initiate no open and immediate discussions.

16th July, 1979.

However, private communications with yourself, as head of the Government, which is a party to the case in question, cannot be a breach of security. This letter will, I hope, convey to you our sense of the possible drift of events involving, as this may, a most serious conflict between official policies and fundamental issues of human rights.

Norris and I remain your loyal supporters. As such, and in the circumstances which I have described, we both feel obliged to share our anxieties with you. In any event, as a Privy Councillor, I believe I should have felt it my duty to do so.

L —
Bill

The Rt. Hon. Mrs. Margaret Thatcher, M.P.



cc DM

DSG
Hunted

10 DOWNING STREET

THE PRIME MINISTER

4 July 1979

Dear Bill,

Thank you for your letter of 19 June concerning the case of the three railwaymen, Messrs. James, Webster and Young, due to be heard before the European Commission of Human Rights on 9 July.

The Government will wish the Commission to be aware of the very different view it takes on the closed shop compared to its predecessor and we have decided this will best be done by our attendance at the oral hearing fixed for 9 July. Ian Percival will put the Government's position. We hope that after this short hearing the Commission will reach its decision without further delay.

Yours sincerely
Margaret Thatcher

The Right Honourable The Viscount de L'Isle, V.C., K.G., G.C.M.G.,
G.C.V.O.



10 DOWNING STREET

PRIME MINISTER

Viscount de L'Isle wrote to you about the case of three railwaymen which is to come before the European Commission of Human Rights on Monday, 9 July (Flag A). Mr. Prior sets down the background (Flag B) and has provided the attached draft reply.

MAP

*Draft now revised
as you indicated*

29 June 1979

Minute fr. Prior to PM cov.
draft reply to Vincent de Lisle
re: Human rights. Hold pending
receipt of a revised reply from
D. of. Employment. MAP



PRIME MINISTER

EUROPEAN COMMISSION ON HUMAN RIGHTS - BRITISH RAIL CASES

Your Private Secretary wrote to mine on 20 June enclosing a letter from Viscount De L'Isle about the above cases. The Viscount has been in correspondence with me but remains unsatisfied that I was unable to tell him, on 18 June, whether or not the Government would be attending the hearing on the case which the Commission has fixed for 9 July. It is common ground that there should be no unnecessary delay in the case and that the Commission should be encouraged to adjudicate expeditiously.

We are now in a position to answer his question and the draft reply I attach to this note does so. It has however taken us a little time to reach a decision on how we should proceed because the issue is far from simple. Indeed it is unprecedented in the Commission's experience for a change of administration marking a sharp change of the Government view on the issues to occur during uncompleted proceedings on a case. Also while Viscount De L'Isle sees the issue in simple terms there are difficult aspects to it, in particular the possible implication in an adverse finding in the case that the UK Government is to be held directly responsible under the European Convention for the independent actions and policies of public sector bodies like nationalised industries.

We have therefore been closely consulting the Solicitor-General and have taken the advice of the Government's Counsel in the case and of FCO officials who handle the Government's relations with the Commission. The Solicitor-General's view - with which I concur - is that we should use the opportunity of the 9 July hearing to indicate to the Commission, in general terms, the very different views of the new Government on the closed shop and to describe, again in general terms, our legislative proposals.

The Solicitor-General also strongly feels we should use the opportunity to voice our objection to any view that the UK Government



is directly responsible for the acts of British Rail (or similar bodies), and to register our disagreement with the argument (under Article 11(2) of the Convention) raised by our predecessors that the 1974/6 legislation under which the three railwaymen were dismissed without redress was, in this case, "necessary in a democratic society ... for the protection of the rights and freedoms of others". The Government should, he feels, argue that Article 11(1), the right to freedom of association including the right to form and join unions, does not confer the negative right to refuse to join a union. This might be necessary in order to narrow the scope of any Commission decision against the UK Government to prevent such a decision being unhelpful for our plans to moderate the operation of closed shops, and check their growth, but to allow existing agreements to continue.

The hearing set for the 9 July is a short-half-day hearing and the points above will, necessarily, be dealt with in broad terms. Because of the importance we attach to the case the Solicitor-General thinks it right that he himself should attend to make the Government's position clear. I very much welcome the Solicitor's decision on this.

There is likely to be some press reference to the case and the Commission will issue a press statement after the hearing. While some press comment may imply criticism that we are "defending" the case, there are, as indicated above, good reasons why we will be arguing a number of points, in particular that concerning the Government's direct responsibility for public bodies. The applicants in the case are, anyway, understood to wish to press ahead with it.

I am copying this minute to the Lord Carrington and Sir Ian Percival.

JP

28 June 1979



8 ST. JAMES'S SQUARE LONDON SW1Y 4JB

Telephone Direct Line 01-214 6025

Switchboard 01-214 6000

M Pattison Esq
Private Secretary
10 Downing Street
LONDON SW1

28 June 1979

Dear Mike

As we discussed on the telephone today, I am sending you a revised draft letter for the Prime Minister to send to Viscount de L'Isle ... (enclosed herewith).

I would be grateful if you could substitute this draft for that attached to Mr Prior's minute to the Prime Minister dated today about the European Commission on Human Rights - British Rail cases.

Yours Sincerely,

ANDREW HARDMAN
Private Secretary

DRAFT REPLY TO VISCOUNT De L'ISLE

Thank you for your letter of 19 June 1979 concerning the case of the three railwaymen, Messrs James, Webster and Young, which is due to be heard before the European Commission of Human Rights on 9 July. I understand you have already been in correspondence with the Secretary of State for Employment on this.

As Jim Prior has indicated, the Government share your concern that the matter should be adjudicated expeditiously but we needed a little time to consider how best to handle it. As you will know, we inherited this case from the previous Administration and indeed those in a similar position to the applicants will have a domestic remedy in the future when the legislative proposals we announced in the Queen's Speech have been implemented.

The Government will wish the Commission to be aware of the very different view it takes on the closed shop compared to its predecessor and we have decided this will best be done by our attendance at the oral hearing fixed for the 9 July. Sir Ian Percival will be clarifying the position on the Government's behalf. We hope that after this short hearing the Commission will reach its decision without further delay.

DRAFT REPLY TO VISCOUNT De L'ISLE

Thank you for your letter of 19 June 1979 concerning the case of the three railwaymen, Messrs. James, Webster and Young, which is due to be heard by the European Commission of Human Rights on 9 July. I understand you have already been in correspondence with the Secretary of State for Employment on this.

As Jim Prior has indicated, the Government share your concern that the matter should be adjudicated expeditiously but we needed a little time to consider how best to handle it. As you will know, we inherited this case from the previous Administration and indeed the applicants would have had a domestic remedy in the case under the proposals we announced in the Queen's Speech.

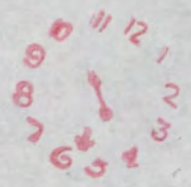
The Government will wish the Commission to be aware of the very different view it takes on the closed shop compared to its predecessor and we have decided this will best be done by our attendance at the oral hearing fixed for the 9 July. Sir Ian Percival will be clarifying the position on the Government's behalf. We hope that after this short hearing the Commission will reach its decision without further delay.

Thank you for your letter of 19 June 1979 concerning the case of the three railmen, Messrs. James, Webster and Young, which is due to be heard by the Wisconsin Commission on Human Rights on 9 July. I understand you have already been in correspondence with the secretary of state for employment on this.

As Jim has indicated, the Government shares your concern that the matter should be adjudicated expeditiously but we needed a little time to consider how best to handle it. As you will know, we inherited this case from the previous administration and indeed the applicants would have had a domestic remedy in the case under the proposals we announced in the men's speech.

The Government will wish the Commission to be aware of the very different view it takes on the closed shop compared to its predecessor and we have decided that this will best be done by our attendance at the oral hearing fixed for the 9 July. In the interim I will be clarifying the position on the Government's behalf. We hope that after this about hearing the Commission will reach its decision without further delay.

28 JUN 1979





file

MC

Lord De L'Isle

10 DOWNING STREET

From the Private Secretary

20 June 1979

I enclose a copy of a letter which has been addressed to the Prime Minister by the Viscount De L'Isle about the case of the three railwaymen who are seeking a declaration that the closed shop is unlawful under the terms of the European Convention on Human Rights.

I think that the Prime Minister may wish to reply personally to Viscount De L'Isle or at least to authorise a response from No. 10. I should therefore be grateful for advice on the terms of a suitable reply; it would be helpful if the draft could reach me no later than Friday 29 June.

I am sending a copy of this letter and enclosure to Paul Lever (Foreign and Commonwealth Office) and Martin Vile (Cabinet Office).

B. G. CARTLEDGE

Ian Fair, Esq.,
Department of Employment.



M

10 DOWNING STREET

From the Private Secretary

20 June 1979

I am writing on the Prime Minister's behalf to thank you for your letter of 19 June about the forthcoming hearing by the European Commission of Human Rights of the case of three railway employees, Messrs. James, Webster and Young.

Your letter is being given consideration and a reply will be sent to you as soon as possible.

B. G. CARTLEDGE

The Right Honourable The Viscount De L'Isle,
V.C., K.G., G.C.M.G., G.C.V.O.

19 June 1979

Dear Prime Minister

The case of the three railwaymen, Messrs. James, Webster and Young, is due to come before the European Commission of Human Rights for oral hearing on Monday 9 July.

The "victims" - to adopt the language of the European Convention of Human Rights - are seeking a declaration that the closed shop is unlawful under the terms of that Convention.

The Freedom Association, of which I am Chairman, has been helping these gentlemen in their pursuit of justice, since the Association's avowed purpose is, inter alia, to secure for the citizen the right of association and the parallel right of non-association.

I have been in correspondence with the Secretary of State for Employment on this matter. He has been able to tell me of the "considerable interest in the case of the Conservative Front Bench when in Opposition" and of "its sympathy for the applicants".

He has gone further in informing me that "the Commission ought to be made aware of the very different views and intentions of this Government regarding the closed shop". But he has so far been unable to say whether Her Majesty's Government will be represented at the oral hearing nor give the nature of those "different views and intentions".

Mr. Callaghan's Administration obtained no less than four postponements of the Commission's hearing of this case. These postponements have been gravely prejudicial to the applicants because of the manifest difference between the capacities of the parties. In particular the railwaymen have been put to greatly increased expense by these manoeuvres. Counsel for the applicants have been compelled to draw the Commission's attention to Article 25 of the Convention whereby the High Contracting Parties solemnly undertake not to hinder access to the Commission by individual applicants.

In these circumstances it has now become a very urgent matter that the case to be adjudicated should be brought to a resolution at the earliest possible moment. With this Mr. Prior has expressed his agreement.

In essence the question is a simple one. Is the closed shop lawful or unlawful under Article 11 (1) or 11 (2) of the Convention ?

I recognize that the question is of international significance. For example, under the domestic law of both France and Germany the closed shop is illegal. It is so under the Constitution of the Irish Republic.

A declaration as to whether the closed shop is lawful or unlawful must therefore intimately affect the existing legal systems of these countries, if of no others, as well as settling the position under law of the closed shop in the United Kingdom.

The European Convention between nations was made so as to institute a systematic protection of "Human Rights and Fundamental Freedoms" by allowing access by individuals to the Commission. This made these rights and freedoms justiciable as between private citizens and superior powers including governments.

Under the last Administration the pursuit of justice before the Commission seems to have been subordinated to the pressures of expediency. If so, such conduct must be in contradiction to the fundamental purposes of the European Convention, designed as it was to elevate individual rights above the convenience of governments and so create within Europe a universe of co-equal individual rights and freedoms.

I am venturing to draw the railwaymen's cases to your attention; for I have every confidence that your Administration will not only see that the Commission is made aware of your different attitude to the case, but that you will make your best endeavours to see that the railwaymen obtain a speedy and unhindered resolution of their case in accordance with the spirit, as well as the letter, of the Convention.

John Maclean

to T.L.H.

The Rt. Hon. Margaret Thatcher, MP,
10 Downing Street
London SW1