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10 DOWNING STREET

From the Private Secretary

19 September 1984

Dear Henry,

TRADE UNION ACT 1984

In his minute to the Prime Minister of 11 September the Solicitor General gave his views on the way in which Part II of the Trade Union Act 1984 would be likely to operate after coming into force on 26 September. The Prime Minister has subsequently received a copy of a note setting out the legal advice received by a private sector company in relation to the dock strike. A copy is attached.

It seems to the Prime Minister that paragraph 3 of the note appears to hold out greater possibility of successful legal action where there are acts by the union to keep an existing strike going.

She would be grateful for further advice from the Attorney General and the Solicitor General which takes account of the opinions expressed in the note. Could this also consider the question of who might successfully bring such action and whether this would include union members who are on strike but who, for one reason or another, feel unable to return to work.

I am copying this letter to David Normington (Department of Employment) and Peter Gregson (Cabinet Office).

Yours sincerely

Andrew Turnbull

Andrew Turnbull

Henry Steel, Esq., C.M.G., O.B.E.,
Law Officers Department.

SECRET AND PERSONAL

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01-405 7641 Extn 3407

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

11 September 1984

PRIME MINISTERTRADE UNION ACT 1984
SECRET BALLOTS BEFORE INDUSTRIAL ACTION

1. The question is the effect of the Act upon a strike (for example) starting after the Act comes into force at a port where dockers have not previously complied with the global strike call already issued by the TGWU.
2. The relevant Part of the Act is Part II.
3. Part II comes into force on 26 September 1984.
4. For simplicity I will refer throughout to a strike call. It will be recalled that the Act operates upon any act done by a trade union inducing a person to breach his contract of employment or to interfere with its performance, e.g. blacking. Such an act will lose immunity after 26 September if it is done "without the support of a ballot".
5. It will have the "support of a ballot" only if
 - (a) the majority of those voting in the ballot have answered Yes, and
 - (b) it is done not later than 4 weeks after the date of the ballot.
6. Unusually, the Bill contains no transitional provisions.

/If



7. If no further strike call had been made, so that in the individual port the eventual strike constituted a belated compliance with the global strike call, the Act will probably be held not to bite.

8. If, after 26 September, a further strike call had been made (by a "responsible person" as defined by section 15 of the Employment Act 1982, i.e. officially) and the strike took place in consequence of that, then immunity would be lost unless Part II had been complied with. This consequence would apply whether the further strike call was of a global nature or was addressed solely to dockers at the individual port, and whether it was identical in its terms and effect to the first one or different from it.

9. An "unofficial" strike call would not be caught by the Act.

10. In paragraph 5 I am able only to state the probable effect of Part II. This is because it is open to argument whether, if Part II did operate so as to deprive the pre-26 September global strike call of immunity in respect of a consequential strike occurring after 26 September, this would be a retrospective effect. The better view is that it would. (The contrary argument is that after 26 September it is open to the TGWU, who are presumed to know the law, to cancel their strike call and thereafter take steps to comply with Part II.) The matter is important because the courts will only construe a provision so as to have retrospective effect if its language plainly requires it, which is not the case here.

11. I am circulating this Note to members of MISC 101 and to Sir Robert Armstrong.

P.M.

TO: The Chairman

FROM: W.R. Mann

Copy to A.K. Black
R. Leach
W.F. Hunt
H.C. Scrimgeour
P. Thomas

DATE: 12th September, 1984

Re: Dock Strike

I had a further Conference with Roger Buckley, Q.C. this afternoon, with particular reference to Sections 10 and 11 of the Employment Act 1984 with regard to secret ballots before industrial action:-

1. He confirmed the view, previously expressed, that once the Act comes into effect on 26th September, 1984, the immunity which trade unions have under Sections 13 of the 1974 Act is not available to them in respect of acts committed on and after 26th September unless those acts are committed in the course of a strike or other industrial action which has been taken with the support of a valid ballot.

2. Strikes in existence on 26th September: the Act will not be applied retrospectively to remove immunity which was otherwise available (i.e. inducing a person to withdraw his labour in furtherance of a trade dispute) to cover their acts prior to that date. For this reason, continuing payment of strike benefit to those already on strike, without any other 'acts' would probably remain immune; but

3. Any further acts by the union in question e.g. exhorting their members to remain in breach of their contracts of employment, or urging (or intimidating) those working to come out on strike, would be without immunity unless supported by secret ballot.

4. Claims: as before there is the need to establish a cause of action at common law - the torts of actionable interference with contractual rights, or of interference with trade or business, to demonstrate that the relevant union is responsible, and that the damages ensued from their actions.

Because of the limits on damages recoverable from a union, the more effective remedy is to seek an injunction. It might be appropriate therefore to write to a union already in strike, just before the commencement of the Act, seeking an assurance that they would take no action on or after 26th September in furtherance of the strike without the support of a ballot under the Act.

