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HOUSE OF LORDS,
SW1A 0PW

5 June 1985

20 OF 20

Dear Tom:

REVISION OF THE NUM RULE BOOK

(meeting folder)
with AT

Your Private Secretary's comments in his letter of 24th May 1985 consider the NUM's proposed rule 26 (which restricts the power to authorise official strike action to the NEC alone) with suspicion that it may be designed -

- (a) to prevent areas rejecting a strike call when an area ballot has gone against it; or
- (b) to empower the NEC to call all areas out without a national ballot at all.

He notes that if the NEC took the latter course, whilst it would forfeit its immunity from legal action, the strike called might get considerable support.

I see another purpose behind this rule change. It concerns the possible exclusion of the union at national level from liability in tort for damage caused by industrial action taken without express central authority. (I note for completeness that individual area mining unions may well have autonomy as to their own rules; their own principal executive committees; and their own consequential liabilities in tort.)

Section 15 of the Employment Act 1982 (of which I attach a copy for ease of reference) deals with the liability of trade

The Right Honourable
Tom King, M.P.,
Secretary of State
for Employment.

/unions for actions

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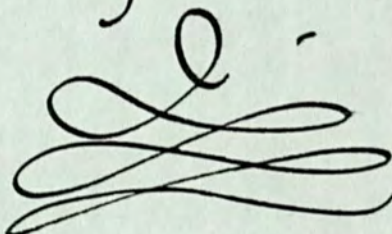
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unions for actions in three situations but the section restricts that liability to acts authorised or endorsed by "a responsible person" as defined in subsection (3). Finally section 15 includes provision concerning repudiation or refusal of authorisation or endorsement.

The proposed new rule 26 may well be intended to show a repudiation or refusal of authority which is sufficient under section 15 to exclude the union at national level from liability for damage caused by industrial action taken for the purposes of these rules without express central authority: the draft rule could be a curtain designed to prevent access by the courts to the union or its funds at national level except where the strike action is called by the NEC itself.

I am copying this letter to the Prime Minister, to other Cabinet colleagues and to Sir Robert Armstrong.

YRS :

A handwritten signature consisting of a large, stylized 'L' followed by several loops and a horizontal flourish.

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action is taken ; and
 be adversely affected by the

be actionable accordingly
 incidents applying to actions

the 1974 Act shall prevent
 any case where a person
 er—

to which that other person
 ntract to which that other
 rty, any term or condition
 d by virtue of section 12(1)

or 13(2) ;
 of a number of acts which
 r attempted inducement.

1974 Act shall prevent an
 y (whether or not under a
 an reasonably be expected
 onable in tort in any case
 sified and one of the facts
 blishing liability is that any

contract of employment or
 other to interfere with its

of employment under which
 l will be broken or its per-
 , or that he will induce
 t of employment or to inter-

asons, for doing the act is
 lone in connection with the
 rvices in question has been,
 persons (other than persons
 employer) who are not mem-
 a particular trade union ;

asons, for doing the act is
 or is likely to be, done by
 is employed by the relevant
 ers of trade unions or of a

(c) the supplier of the goods or services in question is not the relevant employer and the reason, or one of the reasons, for doing the act is that the supplier does not, or is not likely to, recognise, negotiate or consult as mentioned in section 13.

(4) In subsection (3) above "the relevant employer" means the employer under the contract of employment mentioned in subsection (2) above.

Trade disputes

15.—(1) Section 14 of the 1974 Act (immunity for trade unions and employers' associations from certain actions in tort) shall cease to have effect.

Actions in tort against trade unions and employers' associations.

(2) Where proceedings in tort are brought against a trade union—

(a) on a ground specified in paragraph (a) or (b) of section 13(1) of the 1974 Act ; or

(b) in respect of an agreement or combination by two or more persons to do or to procure the doing of an act which, if it were done without any such agreement or combination, would be actionable in tort on such a ground ;

then, for the purpose of determining in those proceedings whether the union is liable in respect of the act in question, that act shall be taken to have been done by the union if, but only if, it was authorised or endorsed by a responsible person.

(3) For the purposes of this section, but subject to subsection (4) below, an act shall not be taken to have been authorised or endorsed by a responsible person unless it was authorised or, as the case may be, endorsed—

(a) by the principal executive committee ;

(b) by any other person who is empowered by the rules to authorise or, as the case may be, endorse acts of the kind in question ;

(c) by the president or general secretary ;

(d) by any other official who is an employed official ; or

(e) by any committee of the union to whom an employed official regularly reports.

(4) An act shall not be taken, by virtue of subsection (3)(d) or (e) above, to have been authorised or endorsed by a responsible person if—

(a) that person was, at the time in question, prevented by the rules from authorising or endorsing acts of the kind in question ; or

- (b) the act has been repudiated by the principal executive committee or by the president or general secretary.
- (5) For the purposes of subsection (4)(b) above, an act shall not be treated as repudiated unless—
- (a) it is repudiated as soon as is reasonably practicable after the purported authorisation or endorsement of the act has come to the knowledge of the principal executive committee or, as the case may be, of the president or general secretary; and
 - (b) the person who purported to authorise or endorse the act has been notified in writing and without delay that it has been repudiated.
- (6) An act shall not be treated as repudiated, notwithstanding subsection (5) above, if at any time after the union concerned purported to repudiate it the principal executive committee or president or general secretary has behaved in a manner which is inconsistent with the purported repudiation.
- (7) In this section—
- “general secretary” means the official of the union concerned who holds the office of general secretary or, where there is no such office, who holds the office which is equivalent, or the nearest equivalent, to that of general secretary;
- “official” means an official of the union concerned; and
 “employed official” means, in relation to that union, an official who is employed by it;
- “president” means the official of the union concerned who holds the office of president or, where there is no such office, who holds the office which is equivalent, or the nearest equivalent, to that of president;
- “principal executive committee” means the principal committee of the union concerned exercising executive functions, by whatever name it is known;
- “rules” means the written rules of the union and any other written provisions forming part of the contract between a member and the other members (or, in the case of a special register body, between a member and the body).
- (8) Where, for the purpose of any proceedings, an act is by virtue of this section taken to have been done by a trade union nothing in this section shall affect the liability of any other person in those or any other proceedings in respect of that act.

- 16.—(1) Subject to subsection (2) below, damages in tort brought against a trade union shall not be awarded against the union in any proceedings shall not exceed the amount specified in subsection (3) below.
- (2) Subsection (1) above does not apply to proceedings—
- (a) for any of the following purposes, that is to say, for the purpose of recovering a sum of duty; or
 - (b) without prejudice to the provisions of subsection (1) above, for the purpose of recovering a sum of duty in connection with the possession, control or enjoyment of land, or in Scotland, for the purpose of recovering a sum of personal or, in Scotland, for the purpose of recovering a sum of real property.
- (3) The appropriate limit of damages shall be—
- (a) £10,000, if the union concerned has fewer than 5,000 members;
 - (b) £50,000, if it has 5,000 or more members but fewer than 25,000 members;
 - (c) £125,000, if it has 25,000 or more members but fewer than 100,000 members;
 - (d) £250,000, if it has 100,000 or more members.
- (4) The Secretary of State may by order vary the sums for the time being specified in subsection (3) above.
- (5) An order under subsection (4) above—
- (a) shall be made by statutory instrument in pursuance of an order in that behalf made by Parliament; and
 - (b) may make such transitional provisions as the Secretary of State considers appropriate.
- (6) In this section—
- “duty” means a duty imposed by or under any enactment;
- “personal injury” includes any impairment of a person's physical or mental condition;
- “real property” means any interest in land.
- (7) For the purposes of this section a trade union consists wholly or partly of representatives of organisations, the members of which are persons who are treated as have their head or headquarters in Great Britain or in Scotland and are treated as members of the union.
- 17.—(1) Where in any proceedings damages, costs or expenses are awarded—
- (a) against a trade union;
 - (b) against trustees in connection with the affairs of a trade union or against a person acting as such and claiming to be acting in a fiduciary capacity as such and as trustee of a trust on their part.

-6 JUN 1985

