



10 DOWNING STREET

THE PRIME MINISTER

11 February, 1980.

We spoke last evening about your letter of 6 February referring to the law relating to industrial disputes. I thought it would be best if I wrote down what I said.

I mentioned the Diplock judgement recently given in the House of Lords. I enclose a copy. It defines the law in no uncertain terms. Diplock dislikes the conclusions he reaches, but he has no option but to pronounce them correct. He said:

" That conclusion is (as I pointed out in the MacShane case) one which is intrinsically repugnant to anyone who has spent his life in the practice of the law or the administration of justice. Sharing those instincts it was a conclusion that I myself reached with considerable reluctance, for given the existence of a trade dispute it involves granting to trade unions a power, which has no other limits than their own self-restraint, to inflict by means which are contrary to the general law, untold harm to industrial enterprises unconcerned with the particular dispute, to the employees of such enterprises, to members of the public and to the nation itself."

That is the starting point from which we must view the new proposals for legislation. Insofar as we do not effectively change the law we would be positively confirming what Lord Diplock said. We would be indicating that we are not prepared to protect the person who through no fault of his own has suffered damage at the hands of another. We should be telling the law-abiding

/ citizen

citizen that we prefer to strengthen the powers of those who inflict injury rather than to help those who suffer from it. That course is not open to anyone who fought the last election on the Conservative manifesto, and it is therefore not open to me.

Now let me turn to the proposals which I understand you have discussed and approved:-

- (i) They do not protect firms or individuals against secondary strike action even though they are blameless. Companies can be driven bankrupt and employees lose their jobs, but they have no remedy against those who cause ~~X~~ them harm.
- (ii) They do not stop secondary blacking. Indeed, they authorise it on a wide scale. Anyone who supplies or purchases from a company in dispute can have his goods blacked or boycotted. He has no remedy at common law.
- (iii) Whether the proposals provide an enforceable remedy in the case of secondary picketing is difficult to judge. ~~The~~ Department of Employment officials had advised that injunctions apply not only to those named in them, but to any who stand in their place. Nevertheless, as you will see from his judgement, Diplock advised "Civil actions cannot be brought against trade unions, but against individual defendants only; and only those individuals are bound to observe the injunction. Everyone else involved in the industrial action can carry on with impunity doing that from which the individual defendants have been restrained."

/ Diplock

I suspect that Diplock will ~~of course~~ be right because the fact that he says so makes it right.

There is an overwhelming majority in the country, (and according to surveys even a majority in the trade unions), which wants industrial action of all kinds to be limited to cases where there is a dispute between employer and employee. The majority believes that others not involved should be able to look to Parliament to make laws to protect them. So do I. Diplock said:

"It is at least possible that Parliament when the Acts of 1974 and 1976 were passed did not anticipate that so widespread and crippling use as has in fact occurred would be made of sympathetic withdrawals of labour and of secondary blacking and picketing in support of sectional interests able to exercise 'industrial muscle'. But if this be the case it is for Parliament not for the judiciary to decide whether any changes should be made to the law as stated in the Acts, and, if so, what are the precise limits that ought to be imposed upon the immunity from liability for torts committed in the course of taking industrial action."

In the same case Lord Scarman told us how to do it.

"And if Parliament is minded to amend the statute, I would suggest that, instead of seeking to close what my noble and learned friend Lord Wilberforce has aptly called 'open-ended expressions' (McShane's case, p.94) such as those which have now given rise to bitter and damaging litigation (e.g., BBC v. Hearn, 1992 2 W.L.R. 1004, N.W.L. v. Woods, McShane v. Daily Express, supra), the draftsman should be bold and tackle his problems head-on. If he is to put a limitation on the immunities in section 13, let him do so by limiting the heads of tortious liability where immunity is concerned: if he is to strengthen the availability of interlocutory relief in industrial relations, let him include clear guidelines in the statute. And, if he is to limit secondary or tertiary 'blacking' or picketing, the statute

conferred

must declare whose premises may, or may not, be picketed and how far the 'blacking' or picketing may extend."

That is what I am trying to do. We should draft precisely to limit the immunity to primary action and to restore common law remedies to those who suffer from secondary action, whether picketing, striking, blacking, boycotting or blockading. Anything less will leave us with no credibility. Diplock has left us no excuse for failing to act.

You refer to moderate trade unionists. I have countless letters from them pleading with me to strengthen their hand against the militants, telling me that is why they voted for us and that now this Government by failing to take effective action has let them down.

If we flinch from this task now, when we have public and massive trade union opinion with us, they are not likely to have much faith in us to do it next winter.

For obvious reasons I have not been able to put this view publicly yet. Judging from my correspondence, a lot of industrialists share it and would go much further. Some want a new criminal offence of "unlawful picketing". I would prefer to see what we can do through the civil law.

You quoted a saying to me. Let me counter with another famous quotation.

"Our doubts are traitors
And make us lose the good
~~We off might win~~
By fearing to attempt."

*we off might win
we off might win*

Shakespeare
"Measure for Measure"

Sir Hector Laing