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A YEAR OF SOCIAL DISCONTENT IN THE UK

Unlike other countries where employees have a legal right to strike, in the United Kingdom employees do not enjoy such a right. All they have, is a freedom¹ to strike or take any other forms of industrial action² so long as they observe strictly the complicated laws on industrial conflict. Failure to obey these laws makes unions liable for the tort of inducing breaches of commercial and/or employment contracts or conspiracy to do an unlawful act. Furthermore, employees would be liable for breaching their contracts of employment.

Currently the Trade Union and Labour Relations (Consolidation) Act 1992 (hereinafter « TULRCA »)³ provides protection to both trade unions and striking employees from committing torts and breaches of contract respectively, if the statutory provisions are strictly observed. Such provisions include, *inter alia*, the holding of strike ballots by the union, notification by the trade union to employers, postal ballot procedures, picketing and much more. Where those statutory provisions are observed, both trade unions and employees⁴ who take industrial action are also protected from liability.

However, not everybody is protected under the 1992 Act. Members of the armed forces are not allowed to take industrial action⁵, nor may the police do so⁶. Other than those prohibitions, there are no additional ones which prevent workers in particular

1 Our underlining.

2 As for example, work to rule, go slow, overtime ban, refusal to cover for absent colleagues or for work lost to strike action and working to rule.

3 See ss. 226 to 235 of the 1992 Trade Union and Labour Relations (Consolidation) Act (hereinafter referred to as «TULRCA »). For the historical aspects on trade disputes, see J. Carby-Hall, « Industrial Conflict », *Managerial Law*, vol. 29, no. 1 and 2, p. 1987; and vol. 29, no. 4, p. 1087.

4 TULRCA 1992 s. 238A which gives the employee automatic protection against dismissal by reason of taking part in a strike or other form of industrial action.

5 Under the Incitement to Disaffection Act 1934.

6 Police Act 1996.

services from taking industrial action⁷ although the Trade Union Act 2016 introduced the notion of « important public services » where employees need to meet a higher ballot threshold of 40 % of eligible voters who voted to take industrial action, longer notice periods to be given by trade unions to employers before industrial action is taken from 7 to 14 days, the requirement of new information and more detailed reporting about ballots and new ballots after six months to renew a mandate for strike action⁸. It should be noticed too that it is an offence under the 1992 legislation to take industrial action in the knowledge or belief that human life will be endangered or serious bodily injury will be caused as a consequence⁹. Where an emergency occurs which is defined by the Civil Contingencies Act 2004 as « an event or a situation which threatens serious damage to human welfare in a place in the United Kingdom »¹⁰, a Minister may make Regulations to protect human life, health and safety as well as replace striking employees with military personnel. Finally, Ministers have powers granted to them in connection with the privatised electricity and water companies to issue general or specific directives to mitigate any dangers to health and safety resulting from industrial action.

I - A SAMPLE OF THE STRIKE SCENE IN THE UK IN 2022 AND 2023

Numerous professions and trades have expressed their displeasure by going on strike due to the cost-of-living crisis, their terms and conditions of employment, redundancies and other issues, which arise at their respective workplaces. A small sample of this discontent expressed through strikes is briefly discussed below¹¹.

In the case of *civil servants*, the Public and Commercial Services trade union (PCS) announced that its members in 124 government departments and other bodies walked out on 1st February 2023. A total of 100 000 UK civil servants joined a 24 hour strike over pay, pensions, redundancies, terms and conditions of employment and job security. A series of other strikes also featured as the PCS union demands of a 10 % rise in wages, better pensions, more job security and no redundancy cuts were not met. A *general strike* took place where hundreds of thousands of workers of different kinds took place. They included teachers, rail workers, university lecturers, ambulance workers, physiotherapists and many others. The strike was over wage increases to

7 Of historical interest only, prison officers were at one time not allowed to take industrial action under the Criminal Justice and Public Order Act 1994 ss. 126-128 provisions but in 2005 a voluntary no-strike collective agreement was concluded between the trade union and the government. Some ancient postal laws exist which prohibited postmen from interfering with or delaying postal deliveries during strikes. These laws have never been tested and during all recent postal strikes, postmen have exercised their freedom to strike.

8 For more information on this legislation see Library Briefing- paper on the Trade Union Bill: *Commons Library Briefing*, Trade Union Bill, 8 September 2015.

9 TULRCA 1992 s. 240. Known as the « life and limb cover » unions and the NHS have developed agreed policies to deal with such situations during industrial action.

10 Civil Contingencies Act 2004 s. 1, which repealed the Emergency Powers Act 1920.

11 The sources are varied and include the BBC news, newspapers namely the *Financial Times*, the *Times*, the *Independent*, the *Guardian*, and the *Telegraph*, a variety of trade union and TUC documents and scholarly articles.

keep up with the rate of inflation. Other such general strikes were planned throughout 2023 by trade unions.

Members of the *Royal College of Nursing* in England have taken industrial action over pay on numerous occasions (life preserving treatment has been observed and all nurses in intensive care and emergency cases were expected to work). The RCN wants a pay rise of 19 %¹². The government in England offered 4.7 % as being in line with the recommendation of the NHS Review body. The government said the pay demand is not affordable.

In Scotland strikes have been put on hold to allow talks on 2023 pay. The two days *teachers'* strike in England and Wales took place in March 2023 and there were also numerous local strikes in those two countries. In Scotland teachers are striking in two Local Authorities. Most state school in England a Wales had a 5 % pay rise. Unions said that this was a pay cut because inflation is over 10 %. Scotland also rejected the 5 % increase.

Rail workers are also striking regularly. The *train drivers* represented by Aslef and RMT unions are also striking. The trade unions are in dispute with the government and rail companies (which are privatised in the UK) about wages, job cuts and changes in terms and conditions of employment. Rail industry employers are saying that pay increases cannot be afforded. Strikes have disrupted the train system since 2022 and throughout 2023 and the RMT has a mandate to continue the strikes until December 2023 and proposes to continue to do so thereafter. The rail industry is under pressure to save money after the Covid pandemic left a hole in their finances. Furthermore, reforms and modernisation are needed on the railways. Network Rail owns the track and infrastructure and proposes to cut 1 900 jobs as part of its changes in which its maintenance teams work. The RMT disagrees with this policy. The Rail delivery Group (RDG) that represents rail companies made an offer, which would have seen train drivers a back dated pay offer of 4 % for 2022 and another 4 % for 2023, ASLEF trade union found the offer unacceptable and the RMT found the offer to be substandard and the union membership rejected it. The RMT also rejected an offer from the RDG of a pay increase of 8 % over two years and guaranteed no redundancies until 2024. The RDG offered the RMT a 9 % rise in pay over two years for crew and platform staff which were all refused.

The border *control staff* has held numerous strikes at airports and seaports throughout the UK and has been replaced by military personnel. *University an/College staff* went on strike on several occasions. The University and College union (UCU) called strikes at 150 universities and colleges across Great Britain for 18 days in February and March 2023¹³. The UCU wants a pay rise of 2 % above the inflation rate

12 To make up for numerous previous years' pay increases which were below the cost of living figures.

13 70 000 UCU members took part including technicians, administrative staff, librarians and academic staff in universities in England, Scotland, Wales and Northern Ireland.

(currently at 10.7 %) or 12 % (whichever is the highest), improved pension benefits¹⁴, restored and excessive workloads resulting in hours of unpaid work tackled and an ending to zero hours and temporary contracts. An increase in pay put the jobs at risk says the Universities and College employers!

Bus drivers are also striking. Stellio bus drivers in London have been holding a series of strikes. The Unite union is calling for a pay rise reflecting the cost of living. *Firefighters*¹⁵ have voted to strike but strikes have not yet taken place. The fire brigade union wants a credible offer after members rejected a 5 % pay offer. *Ambulance workers* want an above inflation pay rise. The government says that pay rises are decided by the independent pay review bodies and higher pay is not affordable.

Strikes took place in Northern Ireland, in various places in England and Wales. 4 200 members of the Chartered Society of Psychotherapy (CSP) which represents *psychotherapists* at 33 health trusts across England went on strike. Staff are striking at all health boards in Wales. In Scotland, CSP members accepted an improved pay offer. Members of the College of Midwives in England and Wales are striking and demanding pay increases above the cost of living. *Junior doctors* staged many three days walkouts in England in March and April 2023 and are considering to take further strike action over a pay increase and terms and conditions of employment. *Medical Consultants* also took strike action in 2023

Postal workers have held a series of strikes. Royal mail has offered a 9 % pay rise over 18 months but the Communication Workers' Union (CWU) wants more offered than the rate of inflation. The UWW also objects to the proposed changes in working conditions including Sunday compulsory working. *Airport* strikes have also been very frequent. Even barristers at law in England and Wales and advocates in Scotland have gone on strike thus affecting the court and tribunal system.

In addition to the above groups of personnel who took strike action, there were others, too numerous to mention here. Some of these include Stagecoach Warwick drivers, Go North East bus drivers, freight drivers in ports, National Express and West Midlands drivers, ambulance drivers, airport workers at Gatwick and Heathrow airports, Logan Air Scotland workers, Virgin Atlantic workers, health and social care staff in Ireland, school teachers, British Telecom workers, Financial Conduct Authority workers, Amazon distribution workers, Rugby Players' Association workers, offshore workers, Rosyth dock workers, Welsh government workers, musicians, Scottish Water workers.

A handful of trade disputes have been resolved among which are the criminal barristers at law in England strike with the award of an 11 % pay increase. British Telecom workers were awarded a 16 % pay rise and the Arriva bus drivers in London won an 11 % pay deal. The health workers who are members of the Unite and Unison unions in Scotland including some paramedics, midwives, nurses and hospital support staff accepted a 7.5 % pay increase.

14 Disputes over pensions started some 10 years ago, but were re-ignited by the revelation that the Universities Superannuation Scheme (USS) was flawed because it took place at the start of the pandemic when global markets were crashing and reached a deficit of £14.1 billion.

15 If the strikes, go ahead it will be the first UK-wide strikes of the fire brigade since 2003.

II - THE TIGHTENING OF INDUSTRIAL ACTION IN CERTAIN SECTORS

As seen above, during 2022 and continuing into 2023 there have been a significant number of public service trade disputes, which related largely to (a) proposed pay awards which were well below the inflation rate which reached 10.7 % and (b) terms and conditions of employment. Industrial action, which consisted of strikes, have affected significantly, *inter alia*, the education, health, transport, the courts and border security sectors¹⁶. The British Government introduced an Act entitled the Strikes (Minimum Service Level) Act 2023¹⁷. The Act allows minimum service levels to be introduced during strikes in certain services to be specified by the Secretary of State. The Act grants a Secretary of State powers to make « Minimum Service Regulations » which set *minimum service levels* required during strikes in any services within the following six sectors¹⁸. These include the fire and rescue services, health services, education services, transport services, border security and the decommissioning nuclear services¹⁹. These are the identical six sectors, which define « important public services » in the Trade Union Act 2016, except that « rescue » is added to « fire services ».

Such Regulations are subject to the *affirmative procedure*²⁰ (i.e. approved by both Houses of Parliament). *Minimum Service Regulations* are able to affect under s. 234B of TULRCA 1992 any strike taking place on the day after they come into force even if the relevant strike ballot had taken place before the Bill became an Act.

The Act allows the employer to give a « work notice » to the trade union concerning any strike affecting a service subject to *the minimum service regulation*²¹. The *work notice*, which has to be given *at least 7 days* before²² the earliest strike takes place would specify which workers the employer requires to work to ensure the service levels by the *minimum service regulations*. They are not permitted to request more workers than « reasonably necessary » to meet the *minimum service regulations*. Work notices would not be permitted to request workers based on whether or not they were trade union members. Employers are required to consult with, and have regard to, the views of trade unions before giving or varying work notices. Where employers have to name individual workers to unions in work notices, this will not constitute a breach of confidence or other data protection requirements, provided that general data protection legislation is followed²³.

16 According to the Office of National Statistics, from June to October 2022 a total of 1.6 million days were lost due to strikes.

17 This Act applies only to England, Wales and Scotland. It does not apply to Northern Ireland because employment law and industrial relations is a devolved matter.

18 TULRCA 1992 new section 234B.

19 The 2023 Act amends the TULRCA 1992 by inserting new sections 234B to 234G into Part 5 of TULRCA 1992.

20 New s. 234F of TULRCA 1992.

21 New s. 234C of TULRCA 1992.

22 Unless the employer and the union agree on a later date. Once given, notices can be varied up until the end of the fourth day before the strike date.

23 New s. 234D of TULRCA 1992.

Where a union « fails to take reasonable steps » to ensure that all workers requested to work by the work notice, it will lose its protection from liability under s. 219 of TULRCA 1992 for inducing workers to take part in the strike and therefore breach their contract and conspiracy to commit an unlawful act both of which are torts. the remedies of which are normally damages or injunctions. A new section inserted in the TULRCA 1992²⁴ removes the protected status of trade unions for any strike where they induce their members to take part in where the union fails to « take reasonable steps » to ensure that all workers who have been identified and requested to work by a work notice comply with that notice²⁵. Furthermore, if the employee refuses to work where a valid work notice is in force and takes part in the strike, she/he would lose the protection for unfair dismissal granted to the employee under the provisions of the Employment Rights Act 1996.

Where the trade union does not take reasonable steps to ensure that all workers comply with work notices signifies that all workers, - whether they work contrary to the work notices or not, who took part in the strike would lose their protection to claim unfair dismissal.

Conclusion

There are three conclusions to be drawn. In the first instance the current British Conservative government is making it more and more difficult for trade unions to take industrial action to protect the only weapon which their members have against unscrupulous and exploitative employers. Secondly, the industrial action procedures have become exceedingly more complicated and there has been a tightening up of the laws on industrial action. Thirdly, the gap between the private and public sector pay has widened a great deal during the rise of inflation and it is difficult to see an end to public sector pay disputes which does not involve the Treasury providing additional cash to Government departments.

24 New s. 234E of TULRCA 1992.

25 In such cases subsection (2) provides that damages are limited to losses incurred by the employer due to the failure by the union to « take reasonable steps » to ensure that workers identified by the work notice comply with that notice.