

editorial

Trade Union Immunities Revisited

In our February 1981 editorial we stated that our overall reaction to the Green Paper on Trade Union Immunities was that it was unlikely to produce any useful reforms of practical value (see also the analysis of the document at (1981) 2 BLR 156). The Secretary of State for Employment, Mr Norman Tebbit, has now published his proposals for a Bill on this subject to be introduced early in 1982.

We have to say that those parts of the proposals concerned with the removal of the immunity of trade unions from actions in tort (trade union officials can already be made liable where they step outside defined areas of immunity) are not likely to make any material contribution to industrial harmony. In times of industrial peace the proposals would have little relevance and in times of conflict the proposals would very likely lead to counter-productive confrontation.

Perhaps a more important part of the proposals concerns the placing of further restrictions on closed shops and increasing the remedies for employees unfairly dismissed because of a closed shop. Clearly these measures will be unpalatable to trade unions but seem inevitable bearing in mind the doubts cast by recent judgments of the European Human Rights Court on the use made of closed shops in the UK.

The Government's proposals do not make reference to a recommendation by the Engineering Employers Federation which has urged that an employer whose business is badly disrupted by industrial action should be able to lay off employees without pay including those not on strike. The intention is to redress the balance between employers and employees since at present a union can cause great disruption to any employer, at little cost to itself, simply by bringing out on strike key personnel such as computer staff – the other members of the union concerned on the employer's staff can continue to report

for work and draw their pay in the usual way. The employer is then caught in a "pincer movement" since his output will have been effectively disrupted but his staff overheads will continue to run against him. The Government is well aware of the mechanics of this strategy since it was employed to great effect against them during the recent civil service dispute. The EEF further suggests that a similar power of laying off should apply where the employer's business is paralysed by industrial action within a monopoly supplier of goods or essential services, such as power or transport, to that business. In the view of the EEF, adoption of these measures would greatly lessen the incidence of hastily or ill-considered strikes since the striking workers would have to have regard to the effects on non-striking fellow workers.

In our view these suggestions are too far reaching in that they would quite unfairly penalise employees who had no wish to take part in the dispute concerned. We do, however, believe that the Government should very seriously consider whether the law could be amended to counter this new practice of withdrawing the labour of only key personnel, possibly by giving employers some restricted power of lay-off.

Credit Cards

In our November 1980 editorial we expressed doubts regarding the recommendation of the Monopolies and Mergers Commission that traders should not be prohibited from discriminating in price terms between customers paying by cash or credit card. We were concerned at the possible abuse of credit card surcharges by traders. Regrettably these fears have proved justified. In the event, the Department of Trade has found it necessary to permit the credit card companies to re-impose prohibitions against such price discrimination. We applaud the Department's prompt action which will remove an obstacle to the growth of "non-cash" settlement methods.