CAMPAIGN FOR TRADE UNION FREEDOM

SUMMER 2022

Agency Workers Strike Breaking Law Will Not Work

By Professor Keith Ewing, President of the CTUF

In responding to the rail dispute, the government is proposing to change the law prohibiting employers from using agency workers as strikebreakers. The current law prohibiting agencies from supplying workers to perform 'duties normally performed by a worker who is taking part in a strike or other industrial action' is to be found in the Employment Agencies Regulations 2004 (SI 2004 No 3319), regulation 7, made under the Employment Agencies Act 1973.

I am assuming that what the government has in mind is a revival of the proposal to allow agency supplied strikebreakers that had been made by the Cameron government at the time of the Trade Union Act 2016. These plans were never implemented, and may have attracted some opposition from employers as well as trade unions, in the former case because of their impracticability, as well no doubt as a desire on the part of reputable agencies to avoid the controversy associated with strike breaking.

That apart, the government's reheating of an old idea raises legal questions which ought to be explored. First, is the use of temporary labour as strikebreakers lawful under the United Kingdom's international legal obligations? Here several ratified treaties are particularly relevant, of which the most important is ILO Convention 87, which as a result of the work of the ILO Committee of Experts and the ILO Freedom of Association Committee includes protection for the right to strike. The use of agency workers as strikebreakers will violate that right.

The ILO Committee of Experts having already concluded that British law does not do enough to protect strikers from being replaced. This is because of the inadequate nature of our unfair dismissal law, which provides protection for those engaged in lawful industrial action for only the first 12 weeks of the dispute. During the 12-week period workers can be temporarily replaced if the replacements are recruited directly by the employer; and after the 12-week period has elapsed, the striking workers can in some circumstances be permanently replaced.

The second question is what are the consequences of legislation introduced in breach of international law? The trite constitutional law answer is that there are no domestic legal consequences unless the treaty has been incorporated by legislation into domestic law. ILO Convention 87 has not been incorporated in this way with the result that any breaches must be pursued in international law alone, and international law provides no meaningful remedy or sanction. However, since Brexit the position has changed.

Non compliance with ILO conventions may also be a breach of the EU-UK Trade and Cooperation Agreement, by which the current government post-Brexit undertook to comply with various international treaties by which in turn it is already bound. The effect is that non compliance with these treaties is not only a breach of the treaties in question, but is unlawful on the additional ground that it is a breach of the agreement with the EU, which by Article 399(2) by which both parties are committed to respecting, promoting and effectively implementing the internationally recognised core labour standards.

The third question then is this: are there any additional legal consequences for breaching the TCA? One answer is that there are procedures in the treaty that allow for disputes to be initiated by either party and to be addressed by what is essentially a conciliation and mediation process which is likely to take years and is unlikely to produce a satisfactory outcome.

continued on page 2...

"the government's reheating of an old idea raises legal questions which ought to be explored"

...continued from front page

In any event, it is unlikely that the European Commission would regard the revocation of regulation 7 to be sufficiently serious, though it is conceivable that it could form part of a bigger dossier to include multiple breaches of ILO Conventions of which the United Kingdom is in serious breach.

However, another answer is that the European Union (Future Relationship) Act 2020, passed to give legal effect to the TCA, includes provisions whereby the government has agreed in some circumstances that the domestic courts should enforce the TCA.

This opens the possibility that the Agency Regulations will be unlawful, with the possibility that they could be struck down by the courts. In practice, however, legal issues will be secondary to health and safety considerations particularly on the railways, even assuming that there are agencies willing to supply and workers who are willing to be supplied.

The TUC and the agency employers body The Recruitment & Employment Confederation (REC) issued a recent statement saying the idea was unworkable and prolong disputes.

Neil Carberry, Chief Executive of the REC, said: "The government's proposal will not work. Agency staff have a choice of roles and are highly unlikely to choose to cross picket lines. Agencies want the ban to stay to avoid them being pressured by clients into supplying staff in hostile and potentially dangerous situations. Earlier this year, we saw the effect on agencies who inadvertently got drawn into the P&O dispute. That offers a salutary lesson."

The government has also announced that it is raising the maximum damages that courts can award against a union, when strike action has been found by the court to be unlawful. The caps on damages, which have not been changed since 1982, will be increased. For the biggest unions, the maximum award will rise from £250,000 to £1 million.

Public Order Bill will criminalise pickets

By James Harrison, Institute of Employment Rights

The Governments proposed Public Order Bill is the latest attempt to introduce legislation that has previously been blocked by the House of Lords as part of the Police, Crime, Sentencing and Courts (PCSC) Bill.

The Government is aiming to reintroduce new measures through the Public Order Bill. This Bill would bring three major changes in the way protests are policed in England and Wales.

Expanding protest related offences: the Bill would introduce four new criminal offences related to disruptive protest including "locking-on"; being equipped to "lock-on"; obstructing major transport works; and interfering with key national infrastructure.

Extending police stop and search powers: the Bill would provide the police with new powers to stop and search people for items related to specified protest-related offences.

Introducing a new preventative court order: the Bill would create Serious Disruption Prevention Orders aimed at people who repeatedly engage in disruptive protest activity. The orders would be issued with conditions to prevent individuals from being in particular places or with particular people or from participating in certain activities.

Image: © Giovanni De Caro | Dreamstime.com

The Government have been keen to make the case that the measures in the Bill apply to a handful of extremists and will not impact peaceful protests or freedom of expression. This has been met with some scepticism by human rights organisations like Liberty, stating "Protest isn't a gift from the State. It's our right".

Lord John Hendy, Chair of the Institute of Employment Rights, said "This is another blow aimed at trade unions, the only organisations capable of fighting back against the relentless and accelerating attack on working class living standards."

Many rights we enjoy today, such as women's suffrage, the right to join a trade union, as well as freedom from various types of discrimination were formed through resisting the bad laws of the day. Without resisting bad laws we could be sleep walking towards a police state. Only mass resistance by trade unions, civil rights groups and wider society will make bad laws ungovernable. It's time to use our human right to protest, or lose it. If not us, then who?

Global body makes health & safety a right at work

From the International Trade Union Congress

Working people around the world are set to benefit from the decision by the International Labour Conference to recognise occupational health and safety as the fifth fundamental principle and right at work.

The change by the ILC – the UN parliament for workplace issues – is the first extension of workers' fundamental human rights in a quarter of a century.

Over 3 million workers a year die because of their work and tens of millions more suffer injuries and ill health. This victory, after a three-year campaign by trade unions, professionals and practitioners and victims' families adds the right to a healthy and safe working environment to the four rights adopted in 1998 by the International Labour Organization (ILO):

- Freedom of association and the effective recognition of the right to collective bargaining.
- The elimination of forced or compulsory labour.
- The abolition of child labour.
- The elimination of discrimination in respect of employment and occupation.

ITUC General Secretary Sharan Burrow said: "The COVID-19 pandemic showed beyond doubt that action was needed to protect workers who are all too often forced to choose between their health and their livelihood. No one should die just to make a living."

Unions will now campaign to increase the number of countries ratifying and implementing all ILO health and safety conventions, giving workers the right to consultation over risk assessments, eradication of toxic chemicals and toxic work organisation including long hours, as well as free protective equipment and training and the right to refuse dangerous work.

Campaign For Trade Union Freedom
www.tradeunionfreedom.org.uk
@UnionFreedom

Institute of Employment Rights
www.ier.org.uk
@IERUK

UK & US unions warn on trade deal

By Tony Burke, Chair of the CTUF

As the USA puts pressure on the the Tory government over the Northern Ireland Protocol warning Johnson there will be no UK- US Trade Deal if they damage the Good Friday Agreement UK and US unions have jointly urged the Tory Government to ensure trade deals promote good jobs, enforce workers' rights and protect public services

The TUC, and its US counterpart the AFL-CIO said that if the UK government wants a closer relationship with the US, it should follow the US' lead in including unions in trade negotiations.

In the US, trade unions are routinely consulted on trade negotiations – and they've had big wins, such as securing a strong enforcement mechanism for workers' rights in the US-Mexico-Canada agreement. This allowed the US government to challenge union-busting in three companies in Mexico.

As a result, independent unions have now been elected at Tridonex, General Motors and Panasonic factories in Mexico.

The TUC and the AFL – CIO told the UK Government any agreement must:

- ensure respect for workers' rights in World Trade Organise rules
- develop laws to enforce workers' rights in global supply chains, with legal penalties if abuses are found
- ensure adequate protections for workers' data and all public services
- support a Just Transition – this must include workers in carbon-intensive industries, like offshore oil, having their qualifications recognised in green industries like offshore wind and supporting the creation of more, good green jobs

Government ministers have said they plan to engage in trade talks with countries where governments are failing to respect fundamental labour rights, such as the Gulf States and Israel. It has also held three rounds of talks with India where there are widespread abuses of human and labour rights, including forced labour.

NZ employers using misinformation on collective bargaining law

From Barry Camfield in Australia

New Zealand's Minister for Workplace Relations and Safety, Michael Wood, has accused employers of 'spreading misinformation' about the Adhern government's plan for Fair Pay Agreements which will bring legal collective bargaining into the NZ economy after an ILO committee had not found FPAs inconsistent with international conventions.

Wood said it was pleasing to have support from the Australian Government, alongside worker representatives.

"The Government is happy to discuss the future design of the FPA system, but active misinformation campaigns and vexatious complaints to international bodies, do a dis-service to the employers that actually want to make the change required to help New Zealand realise its economic potential," he said.

"After the ILO conclusion it's time for Business NZ (the employers body) to come back to the table and work with us to introduce a system that allows industries to set minimum pay and working conditions to stop a race to the bottom."

"Sector based minimum standards are common place across the OECD, including Australia and most of Europe. It's time to leave the hyperbole at home and engage in rolling out an employment relations system that is fairly common place around the world."

Wood said NZ's "30-year experiment" with "a low-cost labour model" hasn't worked. Many workers have suffered, but, equally, our rates of labour productivity have been amongst the worst in the world under that regime."

CAMPAIGN FOR TRADE UNION FREEDOM

Union/TUC

National/Region/Branch

Name of secretary

Address

E-mail

We may contact you with information about the Campaign.

Affiliation costs:

National Unions 100,000+ **£650**
less than 100,000 **£150**
Regional Unions **£75**
Union Branches 500+ **£75**
less than 500 **£35**
Associations of TUCs **£35**
Trade Union Councils **£35**
Strike Committees, non-union organisations & individuals **£15**

The Campaign for Trade Union Freedom is sponsored by 25 national trade union organisations and over 200 branches, trades councils and individuals and financed solely by supporters fees from trade union bodies and individuals. By becoming a supporter you or your organisation show your agreement with the call to repeal the anti-trade union laws, and aid the Campaign's fight. Please make cheques payable to Campaign, for Trade Union Freedom and send to the CTUF, 4th Floor, 1 Islington, Liverpool, L3 8EG Donations gratefully received.