
Economic Perspective 1

THE COAL DISPUTE AND THE NEW EMPLOYMENT LEGISLATION

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The Dispute

Since the beginning of the 1980's the market for coal has contracted dramatically, with the National Coal Board's (NCB) disposals falling by more than 16m tonnes annually in the four years to March 1984. The Board's response had been to stockpile coal - but at a cost. By 1983 it was paying £125m a year in financing the stock whilst still producing 8m tonnes a year in excess demand. In the financial year 1983/84 under the chairmanship of Sir Norman Siddall, 15 pits were closed and 18,000 miners were made redundant. By October 1983 - after Mr MacGregor had taken over the chairmanship of the NCB - the Board and the unions had begun to consider the problem of over-capacity.

On 6 March 1984 Mr MacGregor met National Union of Mineworkers' (NUM) leaders to inform them of his plans for the future of the industry. These plans stressed the need for an orderly contraction to take account of the change in the market since the development of the original Plan for Coal agreed by Government, unions and the NCB in 1974. Over the financial year 1984-85 the new plan envisaged a reduction of output by 4m tonnes to 97.4m tonnes per annum. This, the NUM, inferred would require the closure of 20 pits and the loss of 20,000 jobs. Meanwhile in South Yorkshire, the area director, under instructions to cut back capacity, proposed the closure of Cortonwood colliery, which had a life expectancy of only five years but to which a substantial number of miners had recently been transferred from other closed pits. The NUM, alleged that the area director had 'jumped the gun' and acted in breach of the colliery review procedure. So began the dispute.

On 9 March the NUM Executive voted to give official sanction to strikes due to start in Scotland and Yorkshire over the 'closure' plan, and extended their approval in advance to other areas of the union considering taking action against pit closures. In the dispute, the NUM is seeking (1) the NCB's withdrawal of its 6 March proposal, (2) that the NCB keep open Cortonwood plus four more pits which it claims are marked for closure, and (3) that the Board should not be allowed to close pits on economic grounds but only on those of exhaustion or geological difficulties. At the time of writing the NUM had just rejected the 'last' offer from the NCB. The Board had offered to reconsider its 6 March proposals, that the five pits would remain open and be put through the closure review procedure in common with all other pits and that a fresh independent appeals body would be appointed to which closure matters could be referred by any party and to whose judgements 'due weight' would be given.

Breaches of the Employment Acts in the Dispute

The dispute to date has seen breaches of the secondary picketing and secondary industrial action provisions of the 1980 Employment Act and has not fulfilled the criteria of a lawful trade dispute as defined in the 1982 Employment Act. Under this latter Act organisations and individuals affected by illegal trade union action may sue the union as a corporate body for compensation for losses suffered from such action. Nonetheless, few firms or individuals have resorted to the new legal provisions to obtain protection from actual or potential economic losses as a result of the NUM's

behaviour in the dispute. So far the role of the courts in the strike has been confined to the enforcement of the criminal law with respect to violence against individuals and police officers on picket lines, and the use of the common law by some individual NUM members alleging the incorrect application of procedures for calling strikes as laid down in the union's area and national rule books. For example, the present sequestration of the NUM's national funds stems from a successful plea by working miners against the Derbyshire and Yorkshire areas of the NUM. The court ruled that strike action in these areas was unconstitutionally called and should not therefore have been declared official by the National Executive of the NUM. The NUM nationally was ordered by the court to cease issuing instructions to miners in those areas not to cross picket lines. It did not comply with this order and a contempt of court fine was then imposed on the national union. It failed to pay this, whereupon the court ordered the sequestration of its funds and assets.

The 1980 Employment Act restricts lawful picketing to an employee's own workplace although union officials are allowed to picket the workplaces of those they represent. Striking miners going to other pits within their area or outside it to picket are thus in breach of the Act. The NUM have also placed pickets outside premises belonging to the railways, British Steel, the Electricity Board and certain ports in order to prevent the delivery of coal, all of which is illegal under the 1980 Act. By doing so the NUM exposed itself to legal action from amongst others, the National Coal Board ('flying' pickets going to areas where miners were still working), the British Steel Corporation (e.g. pickets outside the Ravenscraig Steelworks), the British Railways Board, the Central Electricity Generating Board (e.g. pickets outside power stations), and various port authorities, (e.g. the Clyde Port Authority with respect to pickets at Hunterston).

However, with the exception of a High Court injunction granted to the NCB on 14 March to stop Yorkshire miners picketing other pits, no use of the employment laws was made by these organisations. Notwithstanding the fact that on 17 March the NCB was given leave to bring a contempt of

court action against the Yorkshire area of the NUM for defying this injunction against secondary picketing, the Board decided not to proceed. However, in April 1984 two Gloucestershire road haulage companies were granted an injunction against the South Wales area of the NUM prohibiting secondary picketing by its members outside the Port Talbot steelworks in South Wales which was preventing the hauliers delivering coal there. This injunction was ignored, and on 31 July the High Court fined the South Wales area NUM £50,000 for contempt of court and subsequently ordered the seizure of its funds. There have also undoubtedly been breaches of the 1980 Act's secondary action provisions as the result of rail, transport and steel unions' members agreeing to ban the movement of coal. However, these provisions, with their complicated tests for secondary action to be lawful (e.g. first customer, first supplier etc.) have not been tested in the dispute.

The 1982 Employment Act redefined a lawful trade dispute, to require that it relate wholly or mainly to the terms and conditions of employment, thus excluding inter-union disputes and disputes relating solely to matters occurring outside Great Britain, and restricting lawful disputes to those between an employer and his own employees. This last named provision makes disputes between an employer and a trade union where the employer has no dispute with his own employees illegal. The coal dispute has witnessed breaches of this provision of the Act. For example, in May 1984 a day of stoppages in support of the miners was undertaken by various unions in Scotland, who had no dispute with their own employers. Similarly, on 27 June 1984, railway workers in London, despite having no dispute with their employer, staged a 24 hour strike - with limited impact - in support of the NUM. The second national dock strike to occur during the coal dispute took place in late August and was ostensibly over the use of non-registered dock workers to unload a coal boat (the Ostia) at Hunterston in Scotland. There was a strong feeling that this was perhaps an 'excuse to take supportive action over the miners' dispute, but again no organisations attempted to test the legality under the Employment Acts of this second dock strike.

Reasons for the Little Use of the Employment Acts

Managements and their organisations generally welcomed the disputes provisions of the Employment Acts as a useful instrument in evening up a perceived imbalance of bargaining power in favour of the unions. However, it was always unlikely that large corporations with established industrial relation patterns would use the law as a first resort. For such firms the new legal framework was seen rather as a weapon of last resort, and not as a substitute for responsible industrial relations policies on the part of management, or as a way of achieving an easy life in dealing with trade unions. The general expectation was that the Acts would be used by small firms who did not wish to abide by the established industrial relations conventions of the industries in which they operated or had newly entered. Developments in the coal dispute are consistent with this expectation. Many large organisations enjoying good relationships with their trade unions have been affected by breaches of the Employment Acts during the mining dispute. They have preferred not to put these at risk by undertaking actions whose consequences for their future industrial relations are uncertain and unpredictable. They have preferred to minimise uncertainty. The use of the Employment Acts in the dispute has been by small road haulage companies which do not necessarily wish a continuing relationship with trade unions and which may have had to resort to law to protect the future of their businesses given their over-dependence on a small number of contracts.

The NCB has been unwilling to use the Acts because to have done so might possibly have cemented the strike. Working miners, in areas like Nottinghamshire, might have seen NCB action as an attack on their union and thus changed their attitude to the stoppage. 20% of the NUM membership have refused to join the strike, arguing that there should first be a national ballot on the issue. Had the NCB gone ahead with the sequestration of the Yorkshire area assets in March, the NUM might have held a national ballot. This could well have been carried in such circumstances since it might have been viewed not as a strike ballot but rather as a test of loyalty between the union or the employer. A successful national strike ballot would have shut down all the

coalfields and increased the cost of the strike to the NCB. The risk to the NCB of using the secondary picketing provisions was considered a potentially greater cost than not doing so in that it would probably not have had the desired effect.

In addition there is also the fact that the NCB desires a lasting and long term relationship with the NUM and would prefer its co-operation in the rationalisation of the industry rather than force rationalisation upon it. After the strike is over the two sides have to live together and after strikes a major objective of the two sides is to get back to 'normal' relationships as soon as possible. The use of the law against a union always carries the risk that it so poisons attitudes that it unnecessarily prolongs the period before 'normal' relationships are resumed with consequent detrimental effects on the viability of the enterprise.

British Rail, the Electricity Generating Board and British Steel were also probably unwilling to use the Employment Acts because to have done so might possibly have resulted in action by their own workforces in support of the miners against the use of legislation which is viewed by trade union activists as a direct attack on trade unions. These companies presumably value their existing state of industrial relations and fear the use of the law could create unnecessary uncertainty in what at present is seen as a generally satisfactory relationship. Like the NCB, they prefer a lasting relationship with the trade unions with which they deal. In addition, these firms did not need to resort to the law since the police ensured that picket lines did not prevent them from receiving necessary supplies for their production to continue at least at some minimum acceptable level. The prime example of this is the deal negotiated between British Steel, the Transport & General Workers' Union and the Steel unions concerning the levels of coal to be allowed into the Ravenscraig steel works at Motherwell.

4. Conclusions

Despite obvious breaches of the Employment Acts during the current mining dispute there has been little attempt by the

employers to use these provisions to protect themselves against secondary picketing and secondary industrial action. This is explained by the fact that most firms affected have been large with established and stable patterns of industrial relations and have managed despite the dispute to maintain production - at normal levels in some cases and at acceptable minimum levels in others. Such firms have felt no need to use the Acts preferring the certainty of the present situation to the possible uncertainties of resorting to law.

It would, however, be wrong to conclude from the events of the mining dispute that the new Employment Acts cannot be effective. The more plausible conclusion is that employers have not seen them as a relevant means of dealing with their immediate problems stemming from that particular dispute. In a different set of circumstances the Employment Acts might well have been used by the large employers. However, the probability is that such firms, usually characterised by stable industrial relations and a desire to abide by existing IR conventions, would resort to the use of the law only as a very last resort.

In the coal dispute use of the Acts has so far have been by small haulage firms dependent upon a limited range of contracts for survival. When these contracts are put in jeopardy use of the Employment Acts becomes attractive. Such firms are more likely to believe that if the laws are not there they will always be 'crushed' by unions and that if they do not use the laws this will happen to every other small employer challenged by a powerful union. For such firms the law is viewed as the only means of redress and defence. It is here that the potential dangers of the well-meaning but ill-thought-out Employment Acts arise in allowing small unrepresentative employers to push their own economic advantage at the expense of the best traditions of industrial relations in the industries in which they operate. No way was this better illustrated than in the dispute between the National Graphical Association and the Messenger Group of Newspapers.*

* For a fuller discussion of the implication of this dispute see J Gennard (1984), "The Implications of the Messenger Newspaper Group Dispute" *Industrial Relations Journal* Autumn.