CABINET

LEGAL ACTION IN CONNECTION WITH UNOFFICIAL STRIKES

MEMORANDUM BY THE ATTORNEY-GENERAL

I wish to suggest to my colleagues that consultations should be held with the T.U.C. with a view to advice being given to the Boards of the various nationalised industries to make greater use of their power to sue in the Civil courts for damages against those who take part in unofficial strikes.

2. At present the practice of suing for damages for breach of contract when strikes take place exists only in the case of the mining industry and even in that industry it is by no means universal. In South Wales, Lancashire, Yorkshire and, I think, Durham, claims for damages have long been a likely consequence of strike action. But in other districts, notably Scotland, such proceedings are in practice never taken. A consultation I have had with representatives of the other nationalised industries shows that the employers in these have not hitherto used their civil remedies against strikers and are very much disinclined to start. They feel (and I gather that apart from the administrative trouble and inconvenience of issuing summonses, this is their main objection to the proposal) that the commencement of civil proceedings might embitter their relations with their employees after the strike had been terminated. They prefer that if legal proceedings have to be taken at all the opprobrium resulting from them should be visited upon the Government and the Attorney-General, as it is when criminal proceedings are taken, rather than upon themselves. I do not share their view.

3. While it remains my unenviable responsibility to enforce the existing criminal law in appropriate cases and at appropriate times against strikers, I have never pretended to think that the present law is an effective weapon for strike breaking. The Conditions of Employment and National Arbitration Order, 1940 (S.R. and O. 1305 (1940)) in effect absolutely prohibits all strikes, official or not. What would be more useful would be a law delaying strike action either by the necessity of giving notice terminating the contract of employment (as under the Conspiracy and Protection of Property Act, 1875) or one interposing the necessity for a secret, postal ballot and, in either case, prohibiting the expenditure of money or use of propaganda calling for or supporting strike action in breach of the conditions. But even were the law so amended, the criminal law would, I think, remain at best an uncertain and risky weapon. Its use may all too easily bring about the opposite to the desired result; there may be a widespread extension of the strike; those prosecuted tend to be represented as martyrs (by a characteristic extravagance the ten convicted gas strikers are being described by their Communist colleagues as "like the Tolpuddle Martyrs!"); and at the best antagonism is caused against the Government and the police.

4. I believe that these results would be largely avoided if use was made of the civil law of breach of contract rather than the criminal law. Hitherto in the mining industry where proceedings for damages have been taken, they have been brought in the Magistrates Courts under the Employers and Workmen's Act, 1875, one of the consequences of this procedure being that an order for imprisonment may result from non payment. My suggestion is that the embarrassment of possible imprisonment should be avoided by the actions being brought in the County Court, the
damages claimed being limited to say £10. In the event of the damages not being paid, the employers could, if they thought expedient, levy execution or obtain a judgment summons for the payment of so much per month and no question of imprisonment would arise except, and then only on the employers’ motion, in the event of wilful default. Actions for damages could be brought against all strikers. Moreover, an action in the civil courts against the ringleaders for damages for conspiracy would present far fewer difficulties than criminal proceedings for conspiracy at common law.

5. Civil proceedings possess the great advantage that those who take them remain all the time dominus litis—in control of the proceedings. Once criminal proceedings are started in a matter like this they must be carried on and although the strike is settled the sentences must be carried out. Not so in the case of the civil remedy. In this the employer can, without loss of face at any time withdraw or compromise the actions, for instance as part of the terms of settlement. The official Trade Union representatives can regain the confidence of their members by negotiating some mitigation of the damages awarded. The employers may restore good feeling between themselves and their employees, once a return to work has been assured, by voluntarily waiving their claims. I think that the importance of keeping contracts is not entirely lost upon the ordinary working man and that the resentment caused by measures for their enforcement, handled as I have suggested, would certainly be less than that which at present I am bound to cause by criminal proceedings.

6. My impression from the consultations which I have had is that both the Departments concerned and the Boards other than the Coal Board and possibly the British Electricity Commission, are much disinclined to adopt a course which would involve their accepting any responsibility in this matter. This I can understand for it is always easier, in the view of the Departments, for the Law Officers, who alone are responsible for their legal decisions, to carry these awkward burdens than for Departments so to do. I feel disinclined, however, to use the heavier hammer of the criminal law in cases where the lighter mallet of civil proceedings might achieve a possibly more satisfactory result.

7. I suggest, therefore that in any discussions there may be with the T.U.C. we should start from a standpoint favourable to civil proceedings and not seek merely to ascertain the objections to them. In the light of the reactions of the T.U.C. the matter should be discussed with the Boards of the nationalised industries. It would be convenient if these discussions could take place now, in the lull before the next occasion which may call for the implementation of the criminal law.

Royal Courts of Justice, W.C. 2,
11th October, 1950.

H. W. S.