



10 DOWNING STREET

Prime Minister ②

At Cabinet yesterday  
reference was made to loss  
of trade from striking  
ports.

This note illustrates the  
risks that Liverpool dockers  
are running.

I do not think reference  
should be made to this  
explicitly as this would  
damage ACL's Commercial  
position - but the point  
can be made more  
generally

AT

21/9



2 MARSHAM STREET  
LONDON SW1P 3EB  
01-212 3434  
My ref:

Your ref:

17 September 1984

Mr Tynan  
To see  
nbp.

DND  
18/9

Dear David

EFFECTS OF THE DOCK STRIKE ON THE PORT OF  
LIVERPOOL

My Secretary of State was given the attached note about the effects of the current dock strike on the company Atlantic Container Line, and the Port of Liverpool generally, on Friday. He asked me to send copies to the Prime Minister, the Secretary of State for Employment and the Secretary of State for Transport.

I am sending copies of this letter and the note to David Normington and David Barclay.

Yours ever

AH

A H DAVIS  
Private Secretary

Dinah Nichols



## THE EFFECTS OF THE UK NATIONAL DOCK STRIKE

### ON ACL AND THE PORT OF LIVERPOOL IN THE SHORT AND LONG TERM

#### INTRODUCTION

Atlantic Container Line (ACL) is an international company formed by five major European shipping companies to provide a developing through transport service between Europe and North America. The companies in the Group are:

The Cunard Steam-Ship Company plc  
Compagnie Generale Maritime (CGM). (France)  
Intercontinental Transport (ICT) BV. (Netherlands)  
Wallenius Lines. (Sweden)  
Swedish Transocean Lines. (Sweden)

Cunard, CGM and Wallenius each have a 22.2% share holding, Swedish Transocean have 28% and ICT have 5%.

Cunard Steam-Ship, through its subsidiary Cunard Brocklebank Ltd (which also acts as manager), is responsible for the marketing and operation of ACL in the UK. ACL is the market leader in the UK North Atlantic trade with a market share of USA traffic in excess of 30% and a market share of Canadian trade of 25%.

In 1982, following extensive market and financial research, Liverpool was designated the sole UK port on the ACL itinerary. A great deal of marketing time and effort has been expended on both sides of the Atlantic to promote ACL in Liverpool and to improve the reputation of Liverpool. A recent joint advertising campaign between MD & HC and Cunard Brocklebank, the regular publication and distribution to the ACL market of a joint newsletter - "Atlantic Express", and the investment by ACL of £1 million in the Seaforth Terminal, testify to the strength of ACL's commitment to Liverpool. Liverpool offers ACL some important competitive advantages and the port has been performing reasonably well since the decision was made.

ACL now accounts for over 50% of the throughput of the Seaforth Container Terminal. The terminal would probably not be viable if ACL were to quit the port since it is unlikely that an operator of a similar size could be attracted to the port.

#### THE STRIKE AND ITS EFFECTS

Following the National Docks Delegates' decision to call a national dock strike on 24 August, the Liverpool workforce walked out at lunchtime the same day. Other ports delayed their decision until after the bank holiday and others voted on the matter. Most importantly, as far as ACL is concerned, the Port of Felixstowe voted not to join the strike.

At the time of the walk out ACL had a vessel waiting to load 640 twenty foot equivalent units (TEU's) of export cargo, 500 teus of which was already on the terminal. The vessel had to sail empty with a resulting irrecoverable loss of over \$450,000 in contribution to fixed costs. The 500 teus are now strikebound on the terminal.

Cont'd....,



ACL's ability to move UK cargo is now very strictly limited with no ports available for diverted vessels. Some small non-scheme ports have been used to feed cargo to Continental ports but the volume is insignificant and is an extremely costly operation.

ACL's major competitors at Felixstowe have benefited. The Taiwanese Evergreen Line began North Atlantic operations from Felixstowe on 4 September and because of the strike they have been able to secure a market share which would otherwise have been unachievable in so short a time. It is expected that as a result of the strike ACL will have suffered an irrecoverable loss of market share.

The disastrous financial consequences of the loss of market share, revenue and contribution cannot be overstated. ACL is introducing 5 Third Generation vessels this year - 3 are already in service - which require high load factors to operate economically. The total investment in these ships is \$300 million - a capital cost which cannot be serviced with a significantly lower UK market share. The UK is a vital market in the ACL schedules.

Clearly, the long term future of Liverpool as an ACL port is now in jeopardy. ACL cannot afford any long term disruption to its UK operation. The attitude of the market to Liverpool vis-a-vis Felixstowe is critical. Irrespective of ACL's own attitude towards Liverpool, the market may force ACL to Felixstowe given ACL's requirement to maintain the highest possible level of market share, revenue and contribution. Liverpool's recently burnished image was tarnished within hours of the walkout on both sides of the Atlantic.

The feeling that Liverpool has reverted to type is now a pervasive and pernicious influence on ACL's marketing activity in the UK and North America.

The attitude of those customers who have cargo strikebound at Liverpool will be prejudicial to ACL's future in Liverpool. Some of these are major ACL customers and the source of ACL's high UK market share. For instance Hall Brothers have strikebound containers of time-dated confectionery; Swizzles Matlow are similarly situated with containers of Halloween Packs of confectionery; and Kangol Hats have their Winter season stock strikebound. There is only so much disruption which exporters will tolerate on their own overseas marketing activity.

Should ACL be forced to Felixstowe along with other scheme-port operators there would be caused a concentration of deep sea services at that port which would be extremely vulnerable to disruptive industrial action. Such a concentration would not be in the best interests of UK exporters.

#### SUMMARY

ACL and the Port of Liverpool stand to lose a great deal from this strike. Yet neither party is in a position to directly affect the outcome. The union will not talk to the employers since they are not in dispute with the employers. ACL is frustrated in its efforts to maintain a UK service at every turn. ACL is the victim of an overtly political strike, which might, eventually, bring about the demise of the Royal Seaforth Container Terminal.

*File*

*Andrew Turnbull -  
to see*

WITH THE COMPLIMENTS OF

*Jeffrey M. Sterling*

4 CARLTON GARDENS, PALL MALL, LONDON, SW1Y 5AB



MEMORANDUM

TO: A.K. Black  
R. Leach  
W.F. Hunt  
H.C. Scrimgeour  
P. Thomas

FROM: R. Mann

REF: WRM/JKT

DATE: 4th September 1984

EXT: 300

Dock Strike

As requested at yesterday's meeting, I summarize below the provisions of Part II of the Trade Union Act 1984 which make trade unions' immunity for organizing industrial action conditional on the holding of secret and properly conducted strike ballots. These provisions of course have to be taken in the context of the law on industrial action as laid down by the Trade Union and Labour Relations Act of 1974 ("TULRA") and the Employment Acts of 1980, 1982 and now 1984, and case law, and I have therefore also provided a summary of the relevant provisions and their bearing on the dock strike.

1. SECRET BALLOTS BEFORE INDUSTRIAL ACTION.

The new provisions are contained in Sections 10 and 11 of the Employment Act 1984 which comes into effect on 26th September 1984 and will apply to any industrial action which is initiated by a trade union on or after that date.

Section 10 removes a trade union's immunity from legal action in cases where industrial action is authorised or endorsed by it without the support of a ballot. That ballot must have been held not more than four weeks before the industrial action begins, and a majority of those voting must have voted in favour of the action.

Section 11 sets out the conditions which strike ballots must satisfy - entitlement to vote must be given only to those the union reasonably believe will be called upon to take part in the strike or other industrial action, immunity will be lost if any member is called on to strike after being denied entitlement to vote, and the voting paper must be framed to provide simply "YES" or "NO" answers as to the action contemplated.

2. LAW ON INDUSTRIAL ACTION

As advised at earlier meetings, it is necessary to consider first whether there is a cause of action at common law, secondly whether that cause of action has been removed by the immunity conferred by Section 13 of TULRA, and thirdly whether that cause of action was restored by Section 17 of the Employment Act 1980. It is also necessary to consider the definition of "trade dispute" in Section 29 of TULRA and what is lawful picketing under Section 15 of that Act:-



2.1 Cause of action at common law: This is the **tort of actionable interference with contractual rights** and in the Merkur Ireland Shipping Corporation case in the House of Lords in April 1983 Lord Diplock held that there were four essential elements - first, knowledge of the contract and an intention to interfere with its performance; secondly, inducing breaches of contract of employment with the same intention; thirdly, actually procuring such breach, and fourthly, interference with the performance of the contract must be a necessary consequence of the breach of employment contracts. Note that the knowledge of the contract need not relate to a specific contract - in that case the defendants ITF were sufficiently familiar with the shipping industry to know that a time charter would almost certainly have existed, and they intended to prevent the ship owners from carrying out their contractual obligations under such a charter: also that the interference does not have to result in a legal breach of the contract - preventing or hindering performance is sufficient.

2.2 Immunity from legal liability: Section 13 of TULRA removes liability in tort for any act done by a person **in contemplation or furtherance of a trade dispute** which induces another person to break a contract or interferes or induces any other person to interfere with its performance.

2.3 Meaning of trade dispute: This is defined by Section 29 of TULRA as **cut down by Section 18 of the Employment Act 1982 to a dispute between workers and their employer** which relates **wholly or mainly to terms and conditions of employment** and similar industrial matters.

2.4 Restoration of legal liability: Section 17 of the Employment Act 1980 removes from the protection of Section 17 of TULRA any action where the contract concerned is not a contract of employment and involves **secondary action** (i.e. inducing another to break a contract of employment or interference with its performance) **which is not exempted secondary action** e.g.:-

(a) secondary action the purpose or principle purpose of which was directly to **prevent or disrupt the supply during the dispute of goods and services between an employer who is a party to the dispute and the employer** under the contract of employment to which the secondary action relates; and the secondary action was likely to achieve that purpose; and

(b) **lawful picketing** (see below) **which has secondary effects** i.e. primary picketing which induces not only workers to abstain from work at their place of work, but prevails upon workers for other employers e.g. lorry drivers delivering goods, to turn back;

2.5 Picketing: Under Section 15 of TULRA it is **only lawful** for a worker to picket if:-

(i) **in contemplation or furtherance of a trade dispute i.e. with his own employer;** and

(ii) **at or near his own place of work;** and

(iii) **if not lawful as above, the immunity from action under Section 13 TULRA is lost.**



2.6 Liability of unions: Section 15 of the 1982 Act repealed Section 14 of TULRA and thereby removed the almost complete immunity from actions in tort which trade unions have enjoyed since 1906. Trade unions themselves may now be liable for damages (within the limits set out in Section 16) for unlawful industrial action which was authorised or endorsed by the union. In addition injunctions may be issued against unions rather than just against individuals. The limit of damages varies from £10,000 to £250,000 according to the membership of the union. The limits do not apply to any fine which may be imposed for contempt of court if the union breaches an injunction to which it is subject.

### 3. CONCLUSIONS

3.1 The blacking or other disruptive action organised by the T&GW or the NUS, inducing interference with commercial (i.e. other than employment) contracts, is not protected by Section 13 of TULRA because:-

(i) their actions are not in contemplation or furtherance of a trade dispute (Section 13 TULRA) because -

(ii) under Section 29 of TULRA "trade dispute" means a dispute between workers and their employer relating wholly or mainly to terms and conditions of employment; and in any event

(iii) any immunity is lost for non-exempt secondary action under Section 17 Employment Act 1980: i.e. they could not claim exemption for "the prevention or disruption of the supply of goods and services between an employer who is a party to the dispute and the employer (e.g. P&O) under the contract of employment to which the secondary action relates".

3.2 Since there is no "trade dispute" all "dock gate" picketing would appear to be unlawful.

3.3 Ballots: As indicated above, for action taken from 26th September 1984 the trade unions would in any case lose their immunity under TULRA if they organize industrial action without first holding secret and properly conducted strike ballots.

3.4 Remedies: An action lies for injunction and damages for any interference with the performance of a "commercial contract" e.g. the ability to perform contracts of carriage, and also (for action initiated from 26th September without appropriate ballot) for inducing a worker to break his contract of employment.

*P. Mearns*



# P&O Legal Department

To R. Leach

From W.R. Mann

cc A.K. Langley  
J.P.A. Motion  
J.G. Turner

Ref: WRM/JKT

Date 6th September 1984

Ext: 300

## Legal rights in Southampton

Thank you for your note following our discussion with regard to compensation.

As indicated in paragraph 3 of my advice note of 4th September, there can be no doubt that the actions of the T&GW are not protected from legal liability because their workers do not have a "trade dispute" within the meaning of Section 29 of the Trade Union and Labour Relations Act, and furthermore they could not claim that this is exempted secondary action under the Employment Act 1980.

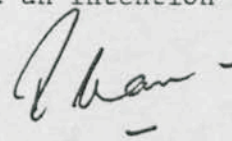
In my view it is therefore a question of establishing whether there has been any actionable interference with our contractual rights - and this is where John Turner is going to brief me. For instance I understood from AKL that there are no fixed contracts with the port authority for the berthing of Canberra. There has undoubtedly been interference with the operation of our business - but it is doubtful whether this has been established in English law as an actionable tort. On the other hand we do have contracts with our passengers, and whilst those contracts (under our trading conditions) exclude liability arising from the dock strike, this is probably a classic example of such interference with performance as is mentioned in paragraph 2.1 of my advice note.

Perhaps John Turner with appropriate colleague(s) would like to discuss possible areas for claim, bringing with him the relevant documentation.

The limit of damages is dependent on the membership of the union - if more than 25,000 but less than 100,000 the limit is £125,000 but if the membership is over 100,000 then the limit is £250,000, exclusive of legal costs. The limit relates to "any proceedings in tort" but I think it would relate to any one claim, and we could probably make a separate claim in respect of every sailing that was disrupted.

I was glad to note the last sentence of your memo - as you know I am distinctly unenthusiastic about P&O issuing the first writ!

Assuming that the facts would justify a claim, and that perhaps my views were supported by Counsel, a more moderate course might be to write to the Union stating briefly our view of the law, pointing out the additional costs we are incurring in moving our passengers between Southampton and Cherbourg, repeating our request for dispensation and asking for a contribution to the costs already incurred: a mild sort of "letter before action" without too much of an immediate threat of the action? That would certainly improve our position if we subsequently took legal action because it would satisfy the first element in the tort of actionable interference with contractual rights (2.1 of my advice note) - knowledge of the contract and an intention to interfere with its performance.



Beaufort House St Botolph Street London EC3A 7DX  
Telephone 01-283 8000 Telex 885551



PRIVATE & CONFIDENTIAL

From R Leach

To W R Mann

cc A K Langley  
J P A Motion/  
J G Turner

6th September 1984

LEGAL RIGHTS IN SOUTHAMPTON

As discussed briefly on 5th September, P&O Cruises has been forced to incur very substantial incremental costs due to our inability to operate our scheduled services into the Port of Southampton as published in our brochure. This very serious and costly disruption of our business is caused wholly and exclusively by national officers of the TGWU instructing their members in Southampton to refuse to berth or handle the ships. Our own major top level efforts to seek a dispensation for CANBERRA (and SEA PRINCESS) on grounds that they cater exclusively for holiday passengers have not met with any tangible sympathetic response.

In consultation with JGT, would you please advise on whether we could seek recovery of our out-of-pocket incremental costs by legal means, taking suit against either TGWU or Associated British Ports. As always, your advice does not necessarily imply that the legal route would be chosen even if our likelihood of success appeared to be great.

*RL*



MEMORANDUM

TO: The Chairman

FROM: R. Mann

cc H.C. Scrimgeour

REF: WRM/JKT

DATE: 7th September 1984

EXT: 300

Dock Strike : Civil Remedies

1. The disruptive actions of the T&GW in organizing withdrawal of labour and picketing (except possibly against British Steel) are not protected from legal liability to aggrieved parties because:-

1.1 The immunity under Section 13 of the Trade Union and Labour Relations Act is limited to a trade dispute between workers and their own employer relating wholly or mainly to terms and conditions of employment;

1.2 Their action is not protected by Section 17 of the Employment Act 1980 because the prevention or disruption of the supply of goods and services is not between an employer who is a party to the dispute and the employer under the contract of employment to which the secondary action relates; and

1.3 Picketing is only lawful by a worker if in contemplation or furtherance of a trade dispute i.e. with his own employer and at or near his own place of work.

2. Civil Remedies: The available causes of action at common law are:

2.1 The tort of actionable interference with contractual rights - interference short of causing a legal breach of the contract is sufficient;

2.2 A possible tort of "interference with trade or business"; and

2.3 Trespass, in the case of unlawful picketing.

3. Potential Claims and Claimants: whilst a large volume of shipping and road transport business is conducted on a 'spot' or casual basis, without fixed contract, the following are examples of potential claims:-

3.1 Cargo contracts to a nominated port closed by the strike: notwithstanding that the ship was diverted to another port and unloaded, and the ship owner was excused from liability for breach caused by strike action, there would be actionable interference with the cargo contract - and the shipper could claim recovery from the union;

3.2 Contracts between port authorities and ship owners for berthing and loading/unloading: where this is undertaken under a fixed term contract e.g. between ABP and Pandoro Fleetwood, both parties would have a right of action against the union for interference with that contract;



3.3 Cruise passengers: whereas most cruise ships dock at the "home port" on a casual basis i.e. under Port Authority regulations without a term contract, there is of course a travel contract between the cruise passenger and the cruise operator. The inability to berth and pick up passengers at the home port constitutes interference with the travel contract, actionable by both cruise operator and the individual passengers - although that interference, and the need to transfer both the cruise ship and the passengers to an open port, does not constitute a legal breach of the travel contract;

3.4 General interference with trade or business: obviously this would cover all the effects of the disruptive action whether or not there had been interference with an identifiable contract, but it is still regarded as a putative tort - not yet firmly established in our law;

3.5 Trespass: whilst there is actionable trespass in the case of unlawful picketing on private premises, it must be doubtful whether there would be cases where commercial loss was directly attributable to the trespass, but injunctive relief would be available.

*J. Han-*